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Supreme Court of the United States

OCTOBER TERM, 1934.

No. 528.

JOSEPH A. BRODERICK, Superintendent of Banks of the State of New York,
Appellant,

vs.

MARY ROSNER, ESSIE R. STONE, CAMILLA LOWY, *et al.*,
Respondents.

Appeal from the Court of Errors and Appeals of the State of New Jersey.

BRIEF FOR RESPONDENTS MARY ROSNER, ESSIE R. STONE, CAMILLA LOWY, *et al.*

NATHAN BILDER,
WALTER J. BILDER,
Of Counsel with Respondents Mary Rosner, Essie R. Stone, Camilla Lowy, et al.

Pandick Press, Inc., 22 Thames St., New York, U. S. A.

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No. 528

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Appellant,

vs.

MARY ROSNER, ESSIE R. STONE, CAMILLA LOWY, *et al.*,
Respondents.

Appeal from the Court of Errors and Appeals of the State of New Jersey.

(References hereinafter to the transcript of record are indicated by the word "Record". References to appellant's brief are indicated by the word "Brief". All italics are ours.)

BRIEF FOR RESPONDENTS MARY ROSNER, ESSIE R. STONE, CAMILLA LOWY, *et al.*

Introductory Statement.

This suit, brought in the courts of New Jersey, is based upon a cause of action created by a statute of the State of New York, viz.: the New York Banking Law. The cause of action is one which is expressly given to the plaintiff by Section 80 of that statute (Brief, pp. 95 and 96). That section provides in substance that:

(a) Where the Superintendent has taken possession of the property and business of a bank (as authorized by Section 57 of the same statute), and

(b) he "has determined from his examination of its affairs that the reasonable value of the assets of such corporation is not sufficient to pay its creditors in full," and

(c) he has determined to enforce the individual liability of stockholders (imposed on them by Section 120 of that Statute) which makes them "individually responsible, equally and ratably and not one for another, for all contracts, debts and engagements of the bank, to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares," and

(d) he has made written demand upon the stockholders for payment of the latters' equal and pro rata shares of the total amount which he has determined to assess against said stockholders, and

(e) such a stockholder "shall fail or neglect to pay such assessment within the time fixed in said notice," he, the Superintendent of Banks, "shall have a cause of action, in his own name as superintendent of banks, against such stockholder either severally or jointly with other stockholders of such corporation, for the amount of such unpaid assessment or assessments, together with interest thereon from the date when such assessment was, by the terms of said notice, due and payable."

The cause of action thus given springs directly from the New York statute and accrues to the Superintendent of Banks thereunder upon the occurrence of the conditions specified therein. Plaintiff's complaint alleges the occurrence of these conditions and the consequent accrual of that statutory cause of action against defendants.

The court below struck out the complaint on defendants' motion on the ground "that the laws of this state prohibit

the maintenance of this action in this court and that the complaint does not set forth any cause of action which is cognizable in a court of law of this state" (Record, p. 21). Defendants' motion and the court's said action thereon were based upon a certain provision of an Act of the Legislature of the State of New Jersey entitled, "A supplement to an act entitled 'An Act concerning corporations' (Revision, 1896), approved April twenty-first, one thousand eight hundred and ninety-six," being Chapter 50, p. 124, P. L. 1897, and now commonly known and referred to as Section 94b of the Corporation Act of New Jersey, which provides as follows:

> 2. No action or proceeding shall be maintained in any court of law in this state against any stockholder, officer or director of any domestic or foreign corporation by or on behalf of any creditor of such corporation to enforce any statutory personal liability of such stockholder, officer or director for or upon any debt, default or obligation of such corporation, whether such statutory personal liability be deemed penal or contractual, if such statutory personal liability be created by or arise from the statutes or laws of any other state or foreign country, and no pending or future action or proceeding to enforce any such statutory personal liability shall be maintained in any court of this state other than in the nature of an equitable accounting for the proportionate benefit of all parties interested, to which such corporation and its legal representatives, if any, and all of its creditors and all of its stockholders shall be necessary parties.
>
> "3. This act shall take effect immediately.
> "Approved March 30, 1897."

In the course of the opinion filed by it on January 30, 1934, the court below said:

> "The proposition advanced by the defendants is that this statute, which it is admitted was in existence in New Jersey before the organization of the Bank of the United States, bars any such action as the present one, * * *" (Record, p. 15).

Then, after dealing with various counter-arguments put forward by plaintiff, the court came to consider the one

> "that to deny the right of this Commissioner to sue at law in this State, as he is suing, is in defiance of the full faith and credit clause of the constitution (fol. 31). Here again I think the point is without substance. It is true that it has been held in one or more cases in the Supreme Court of the United States, as for example in Converse *v.* Hamilton, 224, U. S., 243, that where an assessment of this kind has been definitely adjudicated by the courts of the home State and turned in effect into a judgment against the various parties concerned, that adjudication is enforcible in a sister State by virtue of the federal constitution although the laws of the latter state may be to the contrary. But here we have no court adjudication of any kind. The Commissioner, pursuant to a statute, has taken charge and has determined as a Commissioner that the United States Bank is insolvent and that the stockholders ought to be assessed to make up the deficit. That no doubt he can enforce in New York State under the statute of that State. But when he comes over here he is met by the express prohibition of our statute against any suit at law and by the requirement that the suit shall be in the nature of an equitable accounting, to which all stockholders shall be parties. In the proceeding

before me the suits are several, and only one defendant is a party in each, in theory of law" (Record, p. 20).

Concluding its opinion the court below says:

> "My conclusion is that the present complaint cannot be supported and must be struck out as stating causes of action which by statute are not maintainable at law in this State. Whether a judgment for the defendant should be directed thereon is a matter on which counsel are probably entitled to be heard.
>
> As I view the matter now, it would seem that there should be a judgment for the moving defendants subject of course to appeal, and without prejudice to the filing of a bill in equity on the lines laid down in Section 94-b of the Corporation Act. The matter might be transferred to the Court of Chancery, but the complaint would have to be reframed, I think in any event.
>
> I will hear counsel on the first convenient motion day as to settlement of these details" (Record, p. 21).

No application being made thereafter by plaintiff to the court as suggested in the court's foregoing opinion, the court, on due notice to plaintiff, made an order as aforementioned, on February 10, 1934, striking out plaintiff's complaint and directing the entry of a final judgment (Record, pp. 21, 22). The judgment entered in pursuance of said order was thereafter affirmed on appeal by the New Jersey Court of Errors and Appeals (Record, pp. 30, 31).

Appellant contends that Section 94b of the Corporation Act of New Jersey and the aforesaid judgment operate in this case:

(1) To deny full faith and credit to the New York Banking Law; (2) to deprive appellant and the creditors of the Bank of property without due process of law; and (3) to deny to appellant and the creditors of the Bank the "privileges and immunities of citizens in the several states," all in violation of the pertinent provisions of the Constitution of the United States.

Appellant's chief and almost sole reliance is upon his first contention. His second and third contentions are barely asserted near the end of appellant's brief (pp. 72, 80, 81 and 82). We shall deal with these contentions in the order named.

POINT I.

Appellant's contention that Section 94b of the Corporation Act of New Jersey and the judgment below operate to deny "full faith and credit" to the New York Banking Law in violation of the Constitution of the United States is erroneous.

Appellant's first contention is in substance that the New Jersey statute and the aforesaid judgment operate in this case to deny full faith and credit to the New York Banking Law.

Before discussing the appellant's arguments in this regard and the cases cited in support thereof, we shall undertake affirmatively to establish the proposition that the full faith and credit clause of the Constitution of the United States does not compel a State to open and lend its courts to the prosecution of a suit based upon a cause of action created by the statutes of another State.

One of the earliest cases to evoke a pronouncement of this court upon the subject of the maintainability of a suit

in the courts of one State upon a cause of action arising under the laws of another State, was the case of *The Texas & Pacific R. R. Co.* v. *Cox*, 145 U. S. 593, 36 Law Ed., 829. That was an action to recover damages for the death of plaintiff's husband alleged to have been caused by defendant's negligence. Plaintiff was a resident of Texas. Defendant's railroad ran through that State and the suit was brought in that State in a Federal court. The Federal court had jurisdiction because the defendant was incorporated under acts of Congress. (36 L. ed., at p. 832.) The decedent's injury and death occurred in the State of Louisiana and plaintiff claimed the right "to recover under the law of that State, which was set forth, as well as under that of the State of Texas, it being averred that they were substantially the same" (36 L. ed., p. 830). Defendant demurred, *inter alia*, on the ground that "the cause of action founded upon the statute of Louisiana conferring the right to recover damage for an injury resulting in death, was not enforceable in Texas" (36 L. ed., at p. 833). In considering this ground, this Court discusses what causes of action arising in one State are enforceable in another State, and says:

> "a right arising under or a liability imposed by either the common law or the statute of a State may, where the action is transitory, be asserted and enforced in any court having jurisdiction of such matters and of the parties" (36 L. ed., at p. 833),

but as a complement to this rule, this court immediately adds that

> "the rule thus stated is generally recognized and applied *where the statute of the State in which the cause of action arose is not in substance inconsistent*

> *with the statutes or public policy of the State in which the right of action is sought to be enforced"* (36 L. ed., at p. 833),

Finding that in the case before it

> "The statutes of these two states on this subject *are not essentially dissimilar, and it cannot be successfully asserted that the maintenance of jurisdiction is opposed to a settled public policy of the State of Texas"* (at p. 833),

this court holds that the action was maintainable in Texas.

In other words, according to the aforesaid rule, a cause of action arising under a statute of one State *may not* be "asserted and enforced" in another State if the statute of the State in which the cause of action arose *is* "in substance *inconsistent with the statutes or public policy* of the State in which the right of action is sought to be enforced."

To be sure, there was no contention in that case that the full faith and credit clause of the United States Constitution required the courts in Texas to enforce the cause of action given by the laws of the State of Louisiana; but the qualification embodied in the rule there enunciated by this Court is so utterly inconsistent with the existence of such a constitutional requirement that it is tantamount to a *denial* of its existence. Surely it is inconceivable that this court, one hundred years after the adoption of the United States Constitution, would categorically assert the non-enforceability in one State of a cause of action created by the statutes of another State which was in conflict with the former's laws or public policy, merely because the "full faith and credit" clause was not invoked in the particular case at bar. Surely, too, this court would not have been

at pains to sustain the cause of action in that case *on general principles of law* if by the mere force and mandate of the Constitution of the United States the maintainability of the suit could have been decided summarily.

The broadest possible expression of the rule above-mentioned was given by this court in the case of *Chambers* v. *Baltimore & Ohio R. R. Co.*, 207 U. S. 142, 52 L. ed. 143. That was a suit brought in the courts of Ohio by a citizen of the State of Pennsylvania to recover damages for the death of her husband from injuries alleged to have been caused by the defendant's negligence. Both the injuries and the death occurred in Pennsylvania and the suit was based upon the provisions of the constitution and statutes of that State which gave a cause of action in such a case. The highest court of Ohio had held that the action was not maintainable in the courts of Ohio because "the common law of the State forbade such action" (at p. 146). There was, however, a statute in Ohio which expressly permitted such an action in case the decedent was a citizen of Ohio. The plaintiff appealed to the United States Supreme Court on the ground that the judgment violated "article 4, section 2, paragraph 1, of the Constitution of the United States, which provides that 'the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States'" (52 L. ed., at p. 146). This court enters upon a consideration of this contention with this statement: "In the decision of the merits of the case there are some fundamental principles which are of controlling effect" (52 L. ed., at p. 146). The first of such "principles" which the court adduces is that "The right to sue and defend in the courts * * * must be allowed by each State to the citizens of all other States *to the precise extent that*

it is allowed to its own citizens. Equality of treatment in this respect is not left to depend upon comity between the States, but is granted and protected by the Federal Constitution." Immediately after this statement the court says:

> "But, subject to the restrictions of the Federal Constitution, *the state may determine the limits of the jurisdiction of its courts, and the character of the controversies which shall be heard in them. The state policy decides whether and to what extent the state will entertain in its courts transitory actions, where the causes of action have arisen in other jurisdictions*" (at p. 146).

What "restrictions" of the Federal Constitution the court was alluding to as being a qualification upon this right of each state to determine "whether and to what extent the State will entertain in its courts transitory actions where the causes of action have arisen in other jurisdictions," is unequivocally indicated by the court in the following words:

> "But any policy the state may choose to adopt *must operate in the same way on its own citizens and those of other states.* The privileges which it affords to one class it must afford to the other. Any law by which privileges to begin actions in the courts *are given to its own citizens and withheld from the citizens of other states* is void, because in conflict with the supreme law of the land" (at p. 146).

In concluding its opinion, the court uses language which cannot fail to exercise a decisive influence upon a judgment of the question under discussion in the case at bar.

"It appears clearly, therefore, that the cause of action which the plaintiff sought to enforce was one created for her benefit and vested originally in her. She has not been denied access to the Ohio courts because she is not a citizen of that state, *but because the cause of action which she presents is not cognizable in those courts.* She would have been denied hearing of the same cause for the same reason if she had been a citizen of Ohio. In excluding her cause of action from the courts the law of Ohio has not been influenced by her citizenship, which is regarded as immaterial. *We are unable to see that in this case the plaintiff has been refused any right which the Constitution of the United States confers upon her, and accordingly the judgment is affirmed*" (52 L. ed., at p. 147).

It is manifest that this court regarded *the constitutional clause prohibiting legislative discrimination between its own citizens and citizens of other States* as the *only* constitutional restriction upon a State's right to determine what causes of action arising in another jurisdiction it would entertain in its own courts. Notwithstanding that the "full faith and credit" clause of the constitution (article 4, section 1) was not invoked in that case, it is impossible to view these pronouncements of this court as being other than the most categorical denial that *that clause* commands a State to entertain a suit upon a cause of action created by the statutes of another State. (The New Jersey statute at bar operates equally in cases where the plaintiff is a citizen of New Jersey and where the plaintiff is not a citizen of New Jersey; it is directed not against the suitor but against the cause of action.) Nor can it be said that this pronouncement by this court went beyond the neces-

sities of the case and is therefore *dicta*. The case involved, *inter alia*, a consideration of the meaning and effect of a statute of Ohio (the forum) which permitted such a suit in case *the decedent* was a citizen of Ohio; and in upholding the validity of that statute, this court did so necessarily on the precise ground that the statute was a *proper exercise* by the State of Ohio of *its right to determine "whether and to what extent the State (of Ohio) will entertain in its courts transitory actions, where the causes of action have arisen in other jurisdictions"* (52 L. ed., at p. 146).

It is not unimportant to add that the three judges who dissented from the majority opinion in that case, did so only on the ground that in their opinion the aforesaid statute of Ohio did discriminate against citizens of other States in violation of article 4, section 2. Even these judges, therefore, did not question the right of a State to exclude transitory causes of action arising under the laws of another State where there was no discrimination in this regard in favor of the State's own citizens as plaintiffs in such suits.

The same rule was again explicitly recognized by the Supreme Court of the United States in the case of *Spokane, etc. Railroad Company* v. *Whitley*, 59 L. ed. 1060, 237 U. S. 487, where the court said:

> "In determining the question now presented, it is apparent that the fundamental consideration is that the right to recover damages for the killing of the decedent was created by the Idaho statute. That right could be enforced in another state, *if the enforcement was not opposed to its policy* (Dennick *v.* Central R. Co., 103 U. S. 11, 26 L. ed. 439; Texas & P. R. Co. *v.* Cox, 145 U. S. 593, 36 L. ed. 829, 12 Sup. Ct. Rep. 905)" (59 L. ed., at p. 1067).

The same rule, although not expressly mentioned, was implicitly followed and applied by this court in the case of *Union Trust Company* v. *Grosman*, 245 U. S. 412, 62 L. ed. 368. The facts in that case were stated by this court, speaking through Justice Holmes, as follows:

> "This is a suit brought by the petitioner in the district court of the United States for the northern district of Texas upon two promissory notes made in Chicago by Hiram Grosman and another, and a continuing guaranty executed in the same place by the respondent, Mrs. Grosman, the wife of Hiram Grosman, as part of the same transaction as the earlier note. A decree was rendered for the plaintiff in the district court; but, upon appeal by Mrs. Grosman, was reversed as against her by the circuit court of appeals, on the ground that it subjected her separate property to the payment of the demand, *contrary to the public policy of the state in which the suit was brought*, 143 C. C. A. 132, 228 Fed. 610, Am. Cas. 1917B, 613. Mrs. Grosman and her husband were domiciled in Texas, as the plaintiff seems to have known, and made the contracts while temporarily in Chicago" (62 L. ed., 370 *et seq.*).

Under *a statute of Illinois*, a married woman could contract in that state as freely as a *feme sole*. Under the law of Texas, however, a married woman could not bind herself by such a contract; and from that fact the United States Supreme Court deduced that "the policy of that state is opposed to such an obligation" (62 L. ed., at p. 371). This court affirmed the action of the Circuit Court of Appeals in holding that the contract *was not enforceable in Texas because it was "contrary to the public policy of the state in which the suit was brought,"* to wit, Texas. (Although

the suit was brought in the Federal court in Texas, the United States Supreme Court regarded the case the same as if it had been brought *in a state court* in Texas, this court saying:

> "If the decree would have been right in a court of the state of Texas, it was right in a District Court of the United States, sitting in the same state. Pritchard *v.* Norton, 106 U. S. 124, 129, 27 L. ed. 104, 105, 1 Sup. Ct. Rep. 102)" (p. 372).

True it is that no question was raised in that case as to whether or not the United States Constitution imposed any obligation upon the State of Texas to enforce the cause of action in that case *because it arose under a statute of another State.* Nevertheless, the *non-enforcement* of that cause of action was so plainly a refusal to give effect to the statute of Illinois that it is impossible to reconcile the decision with any notion that the "full faith and credit" clause would have been held to require an opposite decision if that clause had been invoked. Nor is there any question but that this court rested its decision squarely on the basis of a conflict between the statute of Illinois and the law of Texas. True, the court does consider the possibility that even if the suit had been brought in Illinois the courts of that state *might* have held, on general legal principles, that the law of Texas and not the law of Illinois should govern the contract because the defendant was domiciled there and was only temporarily in Illinois when she signed the contract there. But the decision of this court *was not influenced by that conjectural possibility,* and this court treated the case as one where the courts of Texas *were entirely free to treat the question on the basis of the public policy of Texas.*

The rule under discussion was again recognized by the United States Supreme Court in the case of *Atchison, Topeka, etc. Company* v. *Nichols,* 68 L. ed. 720, 264 U. S. 348. This was an action brought in the State Court of California and removed on the ground of diversity into the Federal Court of California. The suit was based upon a Statute of the State of New Mexico, where the cause of action arose. The defendant railroad company contended that its liability was not enforceable in the State of California because the New Mexico law was *"in conflict with the policy of the State of California."* The United States Supreme Court, construing both the laws of New Mexico and the pertinent laws and decisions of the State of California, *held that the laws of California did not manifest any policy of that State which was in opposition to the enforcement by its Courts of the New Mexico law in question.* The careful and extensive consideration given by this court to the question of whether or not there *was any conflict* between the public policy of California and the law of New Mexico which was sought to be enforced in the California Courts, is the most emphatic recognition of the rule that a state is under no constitutional obligation to entertain suits upon causes of action arising under the laws of other states where to do so would conflict with its own public policy.

An illuminating exposition of what the "full faith and credit clause" of the Constitution does require of each State in the way of giving effect to the statutes of another State, is furnished by the case of *Bradford Electric Light Co.* v. *Clapper,* 286 U. S. 145, 76 L. Ed., 1026. That was a suit brought in the courts of New Hampshire by a citizen of that State against a corporation of the State of Vermont,

to recover damages under the provisions of the employers' liability statute of New Hampshire (the forum). The case was removed to the Federal court on the ground of the diversity of citizenship. To quote from the opinion of this court:

> "It appeared that the Company had its principal place of business in Vermont and lines extending into New Hampshire; that Leon Clapper, a resident of Vermont, was employed by it there as a lineman for emergency service in either state; and that in the course of his duties, he was sent to restore some burned-out fuses at a substation in New Hampshire and while doing so was killed. The Company, invoking the full faith and credit clause of the Federal Constitution, set up as a special *defense* that the action was barred by provisions of the Vermont Compensation Act; that the contract of employment had been entered into in Vermont, where both parties to it then, and at all times thereafter resided; and that the Vermont Act had been accepted by both employer and employee as a term of the contract.
>
> The District Court ruled that the action was properly brought under the laws of the State of New Hampshire; that the action was based on a tort occurring in that State; and that the Vermont Workmen's Compensation Act had no extraterritorial effect" (at p. 1030).

To quote this court further:

> "The Vermont Workmen's Compensation Act provides that a workman hired within the State shall be entitled to compensation even though the injury was received outside the State, Vermont General Laws, chap. 241, Sec. 5774; that 'employers who hire workmen within this state to work outside of the

> state, may agree with such workmen that the remedies under the provisions of this chapter shall be exclusive as regards injuries received outside this state by accident arising out of and in the course of such employment, and all contracts of hiring in this state shall be presumed to include such an agreement,' Sec. 5774; that every contract of employment made within the State shall be presumed to have been made subject to its provisions, unless prior to the accident an express statement to the contrary shall have been made, in writing, by one of the parties, Sec. 5765; and that acceptance of the Act is 'a surrender by the parties . . . of their rights to any other method, form or amount of compensation or determination thereof,' Sec. 5763. Neither the Company nor Leon Clapper filed a statement declining to accept any provision of the Vermont Act" (at p. 1031).

Under the *New Hampshire* Workmen's Compensation Act an injured employee was entitled to elect whether to claim compensation under that Statute or to sue for damages at common law; and it was under this provision that plaintiff brought his suit. Thus the Supreme Court was called upon to decide *whether the rights of the parties were controlled by the Vermont Statute or the New Hampshire Statute.* This court put the question thus:

> "The question is whether the fact that the injury occurred in New Hampshire leaves its courts free to subject the employer to liability as for a tort. That is may the New Hampshire courts *disregard the relative rights of the parties as determined by the laws of Vermont* where they resided and made the contract of employment; or must they give effect to the Vermont Act, and to the agreement implied there-

from, that *the only right of the employee* against the employer, in case of injury, shall be the claim for compensation *provided by the statute?*" (of Vermont) (76 L. ed., at p. 1032).

This court proceeds to consider and answer this question as follows:

"If the conflict presented were between the laws of a foreign country and those of New Hampshire, its courts would be free, so far as the restrictions of federal law are concerned, to attach legal consequences to acts done within the State, without reference to the undertaking of the parties, entered into at their common residence abroad, that such consequences should not be enforced between them. But the conflict here is between the laws of two States; and the Company *in setting up as a defense* a right arising under the Vermont statute, invokes Art. 4, Sec. 1, of the Federal Constitution, which declares that 'full faith and credit shall be given in each State to the public acts . . . of every other State.' That a statute is a 'public act' within the meaning of that clause is settled (Citing cases). A federal court sitting in New Hampshire is bound equally with courts of the State to observe the command of the full faith and credit clause, where applicable. The precise question for decision is whether that clause is applicable to the situation here presented. Third. The administratrix contends that the full faith and credit clause is not applicable. The argument is that to recognize the Vermont Act as a defense to the New Hampshire action would be to give to that statute an extra-territorial effect, whereas a State's power to legislate is limited to its own territory. It is true that full faith and credit is enjoined by the Constitution only in respect to those public acts which

are within the legislative jurisdiction of the enacting State. See National Mut. Bldg. & L. Asso. *v.* Brahan, 193 U. S. 635, 647, 48 L. ed. 823, 828, 24 S. Ct. 532; Olmsted *v.* Olmsted, 216 U. S. 386, 395, 54 L. ed. 530, 533, 25 L. R. A. (N. S.) 1292, 30 S. Ct. 292. But, obviously, the power of Vermont to effect legal consequences by legislation is not limited strictly to occurrences within its boundaries. It has power through its own tribunals to grant compensation to local employees, locally employed, for injuries received outside its borders, compare Quong Ham Wah Co. *v.* Industrial Acci. Commission, 255 U. S. 445, 65 L. ed. 723, 41 S. Ct. 373, dismissing writ of error. 184 Cal. 26, 12 A. L. R. 1190, 192 Pac. 1021, and likewise has power to exclude from its own courts proceedings for any other form of relief for such injuries. The existence of this power is not denied. It is contended only that the rights thus created need not be recognized in an action brought in another State; that a provision which Vermont may validly enforce in its own courts need not be given effect when the same facts are presented for adjudication in New Hampshire.

The answer is that such recognition in New Hampshire of the *rights* created by the Vermont Act can not, in any proper sense, be termed an extra-territorial application of that Act. Workmen's compensation acts are treated, almost universally, as creating a statutory relation between the parties—not, like employer's liability acts, as substituting a statutory tort for a common law tort. See Cudahy Packing Co. *v.* Parramore, 263 U. S. 418, 423, 68 L. ed. 366, 369, 30 A. L. R. 532, 44 S. Ct. 153, 23 N. C. C. A. 744; Mulhall *v.* Nashua Mfg. Co. 80 N. H. 194, 197, 115 Atl. 449; Cameron *v.* Ellis Constr. Co., 252 N. Y. 394, 396, 169 N. E. 622; Chandler *v.* Industrial Commission, 55 Utah, 213, 217, 8 A. L. R. 930, 184

Pac. 1020; Anderson *v.* Miller Scrap Iron Co., 169 Wis. 106, 113, 117, 118, 170 N. W. 275, 171 N. W. 935. The relation between Leon Clapper and the Company was created by the law of Vermont; and as long as that relation persisted its incidents were properly subject to regulation there. For both Clapper and the Company were at all times residents of Vermont; the Company's principal place of business was located there; the contract of employment was made there; and the employee's duties required him to go into New Hampshire only for temporary and specific purposes, in response to orders given him at the Vermont office. The mere recognition by the courts of one State that parties by their conduct have subjected themselves to certain obligations arising under the law of another State is not to be deemed an extra-territorial application of the law of the State creating the obligation. Compare Canada S. R. Co. *v.* Gebhard, 109 U. S. 527, 536, 537, 27 L. ed. 1020, 1024, 3 S. Ct. 363. By requiring that, under the circumstances here presented, full faith and credit be given to the public act of Vermont, the Federal Constitution *prevents the employee or his representative from asserting in New Hampshire rights which would be denied him in the State of his residence and employment.* A Vermont court could have enjoined Leon Clapper from suing the Company in New Hampshire, to recover damages for an injury suffered there, just as it would have denied him the right to recover such damages in Vermont. Compare Cole *v.* Cunningham, 133 U. S. 107, 33 L. ed. 538, 10 S. Ct. 269; Reynolds *v.* Adden, 136 U. S. 348, 353, 34 L. ed. 360, 362, 10 S. Ct. 843. The rights created by the Vermont Act are entitled to like protection *when set up in New Hampshire by way of defense to the action brought there.* * * * It is urged that the provision of the Vermont statute which forbids

resort to common law remedies for injuries incurred in the course of employment *is contrary to the public policy of New Hampshire; that the full faith and credit clause does not require New Hampshire to enforce an act of another State which is obnoxious to its public policy;* and that a federal court sitting in that State may, therefore, decline to do so. Compare Union Trust Co. *v.* Grosman, 245 U. S. 412, 62 L. ed. 368, 38 S. Ct. 147. It is true that the full faith and credit clause does not require the enforcement of every right conferred by a statute of another State. There is room for some play of conflicting policies. *Thus, a plaintiff suing in New Hampshire on a statutory cause of action arising in Vermont might be denied relief because the forum fails to provide a court with jurisdiction of the controversy;* see Chambers *v.* Baltimore & O. R. Co., 207 U. S. 142, 148, 149, 52 L. ed. 143, 146, 147, 28 S. Ct. 34; compare Douglas *v.* New York, N. H. & H. R. Co., 279 U. S. 377, 73 L. ed. 747, 49 S. Ct. 355; or because it fails to provide procedure appropriate to its determination, see Tennessee Coal, Iron & R. Co. *v.* George, 233 U. S. 354, 359, 58 L. ed. 997, 999, L. R. A. 1916D, 685, 34 S. Ct. 587; compare Slater *v.* Mexican Nat. R. Co., 194 U. S. 120, 128, 129, 48 L. ed. 900, 903, 904, 24 S. Ct. 581; *or because the enforcement of the right conferred would be obnoxious to the public policy of the forum,* compare Bothwell *v.* Buckbee, M. Co., 275 U. S. 274, 277-279, 72 L. ed. 277, 279, 280, 48 S. Ct. 124; Union Trust Co. *v.* Grosman, 245 U. S. 412, 62 L. ed. 368, 38 S. Ct. 147; Bond *v.* Hume, 243 U. S. 15, 25, 61 L. ed. 565, 569, 37 S. Ct. 366; Converse *v.* Hamilton, 224 U. S. 243, 260, 261, 56 L. ed. 749, 755, 756, 32 S. Ct. 415, Ann. Cas. 1913D, 1292, or because the liability imposed is deemed a penal one, see Galveston, H. & S. A. R. Co. *v.* Wallace, 223 U. S. 481, 490, 5 L. ed. 516, 522, 32 S. Ct. 205; compare

> Stewart *v.* Baltimore & O. R. Co., 168 U. S. 445, 448, 42 L. ed. 537, 538, 18 S. Ct. 105. *But the Company is in a position different from that of a plaintiff who seeks to enforce a cause of action conferred by the laws of another State.* The right which it claims should be given effect *is set up by way of defense to an asserted liability; and to a defense different considerations apply.* Compare Home Ins. Co. *v.* Dick, 281 U. S. 397, 407, 408, 74 L. ed. 926, 933, 934, 74 A. L. R. 701, 50 S. Ct. 338. A State may, on occasion, decline to enforce a foreign cause of action. In so doing, it merely denies a remedy, leaving unimpaired the plaintiff's substantive right, so that he is free to enforce it elsewhere. But to refuse to give effect *to a substantive defense under the applicable law of another State,* as under the circumstances here presented, subjects *the defendant* to irremediable *liability. This* may not be done" (76 L. ed., at p. 1032 *et seq.*).

Here, then, is the fullest and most explicit declaration by this court that the "full faith and credit" clause of the United States Constitution does not prohibit a state from denying "relief" to "*a plaintiff suing on a statutory cause of action arising*" *under the statutes of another State,* but that, on the contrary, a State has a right to refuse to enforce such a cause of action for any one of various reasons, including, specifically, the reason that "the enforcement of the right conferred would be obnoxious to the public policy of the forum." Without more, this decision is dispositive of the related question in the case at bar.

But the force of this decision for our purposes is not yet spent. To repeat what we have already shown, this court holds there that the "full faith and credit" clause requires *only* that when a State court *does entertain a suit* which

involves rights claimed by the parties under the controlling laws of another State, that court "may not disregard the relative rights of the parties as determined by the laws of" the other State (provided, of course, those laws control, as being, for instance, *lex loci contractus*). But even this ruling was limited by the court. For by plainest implication, if not explicity, the court seems to confine its holding *in this regard* to cases where the law of the foreign State is not contrary to the public policy of the State in which the suit is brought. This is manifest from the fact that, after reaching its determination that the "full faith and credit" clause was applicable to the case, the court goes on to show that the statute of Vermont *was not contrary to the public policy of New Hampshire* (the forum). In this connection, the court says:

> "Moreover, there is no adequate basis for the lower court's conclusion that to deny recovery would be obnoxious to the public policy of New Hampshire. No decision of the state court has been cited indicating that recognition of the Vermont statute would be regarded in New Hampshire as prejudicial to the interests of its citizens. In support of the contention that the provision of the Vermont Act is contrary to the New Hampshire policy, it is urged that New Hampshire's compensation law is unique among workmen's compensation acts in that it permits the injured employee to elect, subsequent to injury, whether to bring a suit based upon negligence or to avail himself of the remedy provided by the Act; and that the legislature of New Hampshire has steadily refused to withdraw this privilege. But the mere fact that the Vermont legislation does not conform to that of New Hampshire does not establish that it would be obnoxious to the latter's public policy to

> give effect to the Vermont statute in cases involving only the rights of residents of that State incident to the relation of employer and employee created there. Northern P. R. Co. *v.* Babcock, 154 U. S. 190, 198, 38 L. ed. 958, 960, 14 S. Ct. 978. Nor does sufficient reason appear why it should be so regarded. The interest of New Hampshire was only casual. Leon Clapper was not a resident there. He was not continuously employed there. So far as appears, he had no dependents there. It is difficult to see how the State's interest would be subserved, under such circumstances, by burdening its courts with this litigation" (76 L. ed. 1036-1037).

Our interpretation of the decision in this particular regard is confirmed by the concurring opinion of Justice Stone which seems avowedly to be occasioned by a consideration of this very thing. Says Justice Stone:

> "I agree that in the circumstances of the present case, the courts of *New Hampshire, in giving effect to the public policy of that state, would be at liberty to apply the Vermont statute and thus, by comity, make it the applicable law of New Hampshire.* In the absence of any controlling decision of the New Hampshire courts, I assume, *as does the opinion of the Court,* that they would do so and that what they would do we should do. Hence, it seems unnecessary to decide whether that result *could be compelled, against the will of New Hampshire, by the superior force of the full faith and credit clause*" (76 L. ed., 1037).

It may not be inappropriate to call attention to the one and only decision in the State courts which we have found dealing squarely with the question here at bar. That was the case of *Dougherty* v. *American McKenna Process Co.,*

255 Ill. 369, 99 N. E. 619 (Illinois Supreme Court). We beg leave to quote from the court's opinion in that case as follows:

> "This is a suit brought in the circuit court of Will county by the administrator of the estate of John Dougherty, deceased, to recover damages for the death of plaintiff's intestate. The declaration avers that the deceased, while a citizen and resident of Illinois, was injured while in the employ of the American McKenna Process Company at Elizabeth, New Jersey, and died in the latter state from the effect of his injury. Letters of administration on his estate were granted by the probate court of Will county. This suit is based upon the injuries act of New Jersey, which is set out in the declaration. A general demurrer thereto was *sustained* by the trial court on the ground that Section 2 of the injuries act of Illinois, which provides that 'no action shall be brought or prosecuted in this state to recover damages for a death occurring outside of this state' (Hurd's Rev. Stat. 1911, p. 1290), *prohibited the bringing of this action in Illinois.*
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> "A further contention of counsel is that if this statute applies to actions brought here, based upon the statute of another state, then it is in contravention of Section 1 of article 4 of the United States Constitution, which provides that 'full faith and credit shall be given, in each state, to the public acts, records, and judicial proceedings of every other state,' and also of paragraph 1 of section 2 of said article, which provides that 'the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.'

"Whatever force and obligation the laws of one country have in another depend solely on the laws and municipal regulations of the latter. Story, Confl. L. 8th ed. Section 23. The several states of the Union are not in every respect independent; many of the rights and powers which originally belonged to them being now vested in the government created by the Federal Constitution. Except, however, 'as restrained and limited by that instrument, they possess and exercise the authority of independent states.' Pennoyer *v.* Neff, 95 U. S. 714, 24 L. ed. 565. It was not intended by the provisions of the Federal Constitution relied on by counsel, to give to the laws of one state any operation in other states except by a permission, express or implied, by those states. Paul *v.* Virginia, 8 Wall. 168, 19 L. ed. 357. Laws are without force beyond the jurisdiction of the state which enacts them, and can have no extraterritorial effect except by a comity of other states. Huntington *v.* Attrill, 146 U. S. 657, 36 L. ed. 1123, 13 Sup. Ct. Rep. 224.

"This rule applies with full force to statutes giving a right of action for death by the wrongful act of another. If they are administered outside of the state where they are enacted, it is only on the principles of comity. In this country the courts will generally enforce the law of the place where the injury occurred, unless to do so is contrary to the law, morals, or policy of the forum (citing cases). If the policy of the forum has been expressed positively in a statute, that policy must prevail. When the legislature speaks upon a subject upon which it has constitutional power to legislate, public policy is what the statute indicates (citing cases). Each state, subject to restrictions of the Federal Constitution, determines the limits of the jurisdiction of its courts,

the character of the controversies which shall be heard in them, and how far its courts having jurisdiction of the parties shall hear and decide transitory actions where the cause of action has arisen outside of the state. St. Louis, I. M. & S. R. Co. *v.* Taylor, 210 U. S. 281, 52 L. ed. 1061, 28 Sup. Ct. Rep. 616, 21 Am. Neg. Rep. 464. Different states may have different policies, and the same state may have different policies at different times, provided that any policy the state may choose to adopt must operate the same way on its own citizens and those of other states. Chambers *v.* Baltimore & O. R. Co., 207 U. S. 142, 52 L. ed. 143, 28 Sup. Ct. Rep. 34. In this last case it was held that a statute of Ohio providing that no action could be maintained in that state for wrongful death occurring in another state, except where the deceased was a citizen of Ohio, did not violate the Federal Constitution. A dissenting opinion, joined in by three members of the court in effect conceded that, had the Ohio court excluded from the courts of that state all actions for personal injuries arising in other states, it would have been constitutional. The reasoning of that decision as to the right of a state to exclude actions of the kind here in question fully sustains the validity, under the Federal Constitution, of the provision of the injuries act above referred to."

Even if the rule thus recognized in the foregoing cases had never been enunciated, there would still be adequate authoritative ground on which to rest a holding that the "full faith and credit" clause of the Constitution does not require each State to entertain suits based on causes of actions created by the statutes of other States. We allude to the long-since settled view of this court that the "full faith and credit" clause of the Constitution "*establishes*

a rule of evidence rather than of jurisdiction." Thus in the case of *Anglo-American Provision Company* v. *Davis Provision Company,* 191 U. S. 373, 48 L. ed. 225, this court, speaking by Justice Holmes, said:

> "We are of the opinion that the section of the Code as construed is not unconstitutional. The precise point has not been decided by this court, but it has been laid down in cases which raise greater difficulties than the present, that this provision of the Constitution establishes *a rule of evidence rather than of jurisdiction.* Wisconsin *v.* Pelican Ins. Co., 127 U. S. 265, 291, 32 L. ed. 239, 243, 8 Sup. Ct. Rep. 1370; Andrews *v.* Andrews, 188 U. S. 14, 36, 47 L. ed. 366, 371, 23 Sup. Ct. Rep. 237. The Constitution does not require the state of New York to give jurisdiction to the supreme court against its will. *If the plaintiff can find a court into which it has a right to come,* then the effect of the *judgment* is fixed by the Constitution and the act in pursuance of it which Congress has passed. Rev. Stat. Sec. 905 (U. S. Comp. Stat. 1901, p. 677). But the Constitution does not require the state to provide such a court" (48 L. ed., at p. 227).

The same view had been previously expressed by this court in the case of *Huntington* v. *Attrill,* 146 U. S. 657, 36 L. ed. 1123, where the court said:

> "Whether the Court of Appeals of Maryland gave full faith and credit to the *judgment* recovered by this plaintiff in New York depends upon the true construction of the provisions of the Constitution and of the Act of Congress upon that subject.
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> "The provision of the Constitution is as follows: 'Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings

of every other State. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.' Art. 4, Sec. 1.

"This clause of the Constitution, like the less perfect provision on the subject in the Articles of Confederation, as observed by Mr. Justice Story, 'was intended to give the same conclusive effect to judgments of all the states, so as to promote uniformity, as well as certainty, in the rule among them;' and had three distinct objects: first, to declare and by its own force establish, that full faith and credit should be given to the judgments of every other State; second, to authorize Congress to prescribe the manner of authenticating them; and third, to authorize Congress to prescribe their effect when so authenticated. Story, Const. Secs. 1307, 1308.

"Congress, in the exercise of the power so conferred, besides prescribing the manner in which *the records and judicial proceedings* of any State may be authenticated, has defined the effect thereof, by enacting that 'the said records and judicial proceedings, so authenticated, shall have such faith and credit given to them in every court within the United States, as they have by law or usage in the courts of the State from which they are taken.' Rev. Stat., Sec. 905, re-enacting Act of May 26, 1790, Chap. 11, 1 Stat. at L. 122.

"These provisions of the Constitution and laws of the United States are necessarily to be read in the light of some established principles, which they were not intended to overthrow. They give no effect to judgments of a court which had no jurisdiction of the subject-matter or of the parties. D'Arcy *v.* Ketchum, 52 U. S. 11 How. 165 (13: 648); Thompson *v.* Whitman, 85 U. S. 18 Wall. 457 (21: 897). *And they confer no new jurisdiction on the courts of*

any State; and therefore do not authorize them to take jurisdiction of a suit or prosecution of such a penal nature, that it cannot, on settled rules of public and international law, be entertained by the judiciary of any other State than that in which the penalty was incurred. Wisconsin *v.* Pelican Ins. Co. above cited.

"Nor do these provisions put the judgments of other states upon the footing of domestic judgments, to be enforced by execution; but they leave the manner in which they may be enforced to the law of the State in which they are sued on, pleaded or offered in evidence. McElmoyle *v.* Cohen, 38 U. S. 13 Pet. 312, 325 (10: 177, 183). But when duly pleaded and proved in a court of that State, they have the effect of being *not merely prima facie evidence, but conclusive proof,* of the rights thereby adjudicated; and a refusal to give them the force and effect, *in this respect,* which they had in the State in which they were rendered, denies to the party a right secured to him by the Constitution and laws of the United States" (36 L. ed., at pp. 1133-1134).

In the case of *State of Wisconsin* v. *Pelican Ins. Co.*, 127 U. S. 32 L. ed. 239, this court said:

"The application of the rule to the courts of the several States and of the United States is not affected by the provisions of the Constitution and of the Act of Congress, by which the *judgments* of the courts of any State are to have such faith and credit given to them in every court within the United States as they have by law or usage in the State in which they were rendered. Const. art. 4, sec. 1; Act May 26, 1790, chap. 11, 1 Stat. at L. 122; Rev. Stat. Sec. 905.

"Those provisions establish a rule of evidence, rather than of jurisdiction. While they make the

record of a judgment, rendered after due notice in one State, conclusive evidence in the courts of another State, or of the United States, of the matter adjudged, they do not affect the jurisdiction, either of the court in which the judgment is rendered, or of the court in which it is offered in evidence. Judgments recovered in one State of the Union, when proved in the courts of another government, whether State or national, within the United States, differ from judgments recovered in a forein country in no other respect than in not being re-examinable on their merits, nor impeachable for fraud in obtaining them, if rendered by a court having jurisdiction of the cause and of the parties. Hanley *v.* Donoghue, 116 U. S. 1, 4 (29: 535, 536).

"In the words of Mr. Justice Story, cited and approved by Mr. Justice Bradley, speaking for this court, 'The Constitution did not mean to confer any new power upon the States, but simply to regulate the effect of their acknowledged jurisdiction over persons and things within their territory. It did not make the judgments of other States domestic judgments to all intents and purposes, but only gave a general validity, faith and credit to them as evidence'" (32 ed., at p. 244).

If that is the true meaning and effect of the "full faith and credit" clause in its application to foreign judgments, *a fortiori* is such its meaning and effect in the case of foreign statutes. Such being the nature and operation of the "full faith and credit" clause, obviously it can require no more than this: that when a court of one State does entertain a suit which involves a matter as to which the rights of the parties are, on general legal principles, governed by the statutes of another State, the court (of the forum) shall permit those statutes *to be put in evidence* and shall accord

to them *the probative effect of establishing those rights.* This requirement, however, is far different from a mandate to the courts of each State *in invitum to take jurisdiction* of suits based upon causes of action created by the statutes of other States.

Discussion of appellant's argument relating to the application of the "full faith and credit" clause of the United States Constitution to the case at bar.

Appellant's argument on this score is set forth in appellant's brief at pages 38 to 71, inclusive. Up to page 38 of his brief, the arguments advanced and authorities cited by appellant seem to have no important bearing on any federal question involved in this appeal; and we therefore consider it unnecessary to discuss those arguments and authorities.

Appellant first argues the proposition that because the "interests and property rights" involved in this case are "nation wide," it follows that a nation wide effect should be given to the liability created by the New York Banking Law by enforcing it in all the States. (Brief, pp. 38 *et seq.*). Obviously, this argument is not, and cannot be, predicated upon any constitutional ground. At most, it suggests that a nation wide enforcement of the New York Banking Law is to be desired, but not that it is to be constrained. The case of *Pulsifer* v. *Greene,* 96 Me. 438, cited by appellant (Brief, p. 39), merely holds that an action to enforce such a liability is *transitory.* That case does not touch upon the question as to the right of any other state to refuse to entertain such a suit in its courts. The same comment applies to the case of *Lewisohn* v. *Stoddard,* 78 Conn. 575, which appellant cites on page 41 of his brief. Moreover,

if that case be viewed as holding that state courts are compelled to entertain suits based on causes of action arising under the statutes of another state because otherwise "a fatal defect would exist in the American system of remedial procedure" (Brief, p. 41), it is sufficient to remark that such a holding would be "fatal" *to the American political system;* for it would abolish the sovereignty of the states and change our political system from a *federal* to a *national* character. Appellant asserts (Brief, p. 42) that in cases where state courts "have refused to permit enforcement of assessments levied under the laws of different (other) states, * * * this Court has repeatedly held that under the full faith and credit clause of the United States Constitution such states must recognize and give effect to the laws of the state of incorporation" (Brief, p. 42). But appellant cites no cases in support of this assertion, and the fact is, as will hereinafter appear, that the cases which appellant has in mind are all cases where the "assessments" were *judicial assessments,* that is to say, *judgments of a court.* Such a *judgment* of another state, as we shall show, stands on a wholly different footing from a *statute* of another state as regards the effect which the United States Constitution requires that it be given by the courts of other States.

Appellant next cites and quotes from the case of *Royal Arcanum* v. *Green,* 237 U. S. 531, 59 L. ed. 1089 (Brief, p. 42), as if that were a case whose *ratio decidendi* was "the paramount necessity of giving national effect to the law of the state of incorporation." Such is not the fact. The plaintiff in that case, a citizen and resident of New York, was a member of a fraternal beneficial corporation organized under the laws of Massachusetts. Plaintiff was

affiliated with one of the branch lodges of this organization which was located in New York. His membership imposed on him, *inter alia*, an obligation to pay a specified monthly assessment. Several years after he joined, the amount of his monthly assessment was increased by corporate action duly taken in accordance with the corporation's constitution and by-laws. For some years plaintiff paid this increased assessment, doing so latterly under protest. Finally he ceased making these payments and instituted a suit (to quote the court) "assailing the validity of the increase in the rate of assessment made in 1905 on the ground that it was void, as exceeding the powers of the corporation, and because conflicting with his contract rights as a member of the corporation and a certificate holder. The prayer of the bill was * * * that the corporation be confined to the rate of assessment established by the amendment adopted in 1898, and that the complainant be decreed to have a contract right to pay only that sum monthly in discharge of his duty to pay assessments, and that the corporation and its officers be enjoined during his life from exacting any greater sum, or in any way suspending him for refusing to pay the amount fixed by the amendment of 1905" (59 L. ed., at 1098). Four years previous to this suit, certain other members of the organization had instituted a substantially similar suit in the courts of Massachusetts and in that suit it was determined "that the increase complained of was valid, impaired no contract right of the certificate holders, and was entitled to be enforced" (59 L. ed., at p. 1097). The *defendant* set up *the defense* "that the rights of the plaintiff in respect to his contract with the said defendant and his membership in the defendant order, and the changes adopted by it, were

and are concluded and determined by the aforesaid *judgment* of the supreme judicial court of Massachusetts; that under the Constitution of the United States the same is entitled to full faith and credit in the State of New York, and that the complaint should be dismissed" (59 L. ed., at p. 1098). At the trial an exemplified copy of the Massachusetts *proceedings and judgment* was offered in evidence but *excluded* by the court and the said *defense* was overruled, *on the ground that the plaintiff's "rights" were controlled by the law of New York and not the law of Massachusetts.* The trial court's action was affirmed by the New York Court of Appeals "on the ground *that the law of New York governed* and established under the circumstances disclosed the right of the complainant to the relief which had been awarded him" (59 L. ed., at p. 1099). Defendant appealed to the United States Supreme Court, claiming that the New York courts had failed to give "due effect" *to the Massachusetts judgment* as required by the full faith and credit clause of the United States Constitution. By way of stating the question presented for its decision, the United States Supreme Court said:

> "And as what was the due effect to be given to the *judgment* depended, as we shall hereafter more particularly point out, upon whether the Massachusetts law controlled the parties, since if it did, the judgment would be entitled to one effect, and if it did not, to another effect, it follows that the claim as to constitutional right concerning the judgment also *involved deciding whether the Massachusetts law controlled.* It follows that in both aspects the claim of full faith and credit under the Constitution of the United States was asserted, and *whether the court below erred in holding that that clause was in-*

> *applicable because the contract was a New York contract governed by New York law is the question for decision.* And the solution of that question involves two considerations: first, was the controversy to be determined with reference to the Massachusetts charter and laws and judgment; and second, if yes, did they sustain the right of the corporation to make the increased assessment complained of" (at p. 1100).

Reasoning on principle, this court reached the conclusion that *as a matter of general law,* the validity of the corporate action increasing the monthly assessment and the resultant obligation of plaintiff to pay the increased amount *was to be determined by "the charter of the corporation and the laws of the State under which it was granted"* (that is, Massachusetts) (59 L. ed., at p. 1100). Referring next to the authority of the decided cases, this court adverts to "a line of decisions" which "by the application of the same principal" (of general law) establish that the liability of a stockholder to pay an assessment on his stock subscription is governed by the laws of the State of the corporation's domicile as well as by judicial proceedings taken therein to determine the necessity and amount of such assessment (59 L. ed., at p. 1101). Hence the court concludes that the answer to the first of the two questions involved, *viz*: "was the controversy to be determined with reference to the Massachusetts charter and laws and judgment" (59 L. ed., at p. 1100) was "Yes". To the other question, *viz*: "did *they* sustain the right of the corporation to make the increased assessment complained of?" (59 L. ed., at p. 1100), this court finds a ready answer in the *judgment* of the Massachusetts court which so held. Since the controversy was governed by the Massachusetts

law and since the Massachusetts judgment had adjudicated that, according to the Massachusetts law, the assessment in question was valid, this court held that the "full faith and credit clause" of the United States Constitution required the courts of New York to give effect to that *judgment* by upholding the validity of the assessment in the suit before it. The entire holding in the case may be summarized as follows: Where a court in one State entertains a suit which involves a matter as to which *the rights of the parties* are, on general principles of law, governed by the statutes of another State, and *those rights have been adjudicated* by a court in that other State by a judgment which, by the law of that State *and on general principles of law,* is binding on the parties in the suit, at bar, the court is bound by the Constitution of the United States to treat the parties' rights as *settled by the foreign law and judgment.* The case is in all essentials exactly like the case of *Bradford Electric Light Co.* v. *Clapper,* 286 U. S. 145, 76 L. ed., 1026, which we have hereinabove discussed. Like that case, it sustained *a defense* based upon rights arising under the statute of another State and governed by that statute, on general principles of law. Indeed, the case under discussion is far weaker even than the *Bradford* case, *supra,* so far as this appellant is concerned. For in that case this court, on constitutional grounds, compelled the State court to recognize (as a *defense*) rights arising under a foreign statute *unaided by any foreign judgment establishing those rights,* whereas in the case under discussion, the decision rests upon the constitutional requirement of giving due effect *to a foreign judgment.* As we shall hereinafter show, the effect which the United States Constitution requires one State to give to the judgment of another State is far dif-

ferent from the effect which it requires in the case of foreign statutes. Since, as we have shown, the *Bradford* case, *supra*, lends no support to the appellant, *a fortiori* the case under discussion does not do so.

Appellant next cites (Brief, p. 47, *et seq.*) the case of *Modern Woodmen of America* v. *Mixer*, 267 U. S. 544, 69 L. ed. 783, as if it lent support to the same proposition for which appellant cites the case of *Royal Arcanum* v. *Green*, *supra*. The opinion in the case is so comparatively short that for the sake of clarity we beg leave to quote it *in toto:*

> "This is a suit by the beneficiary of a certificate issued by a fraternal beneficiary society incorporated in *Illinois*. The member to whom the certificate was issued was the plaintiff's husband, and the ground of recovery is that the husband had disappeared and had not been heard of for ten years before this suit was brought. His expectancy of life according to the tables had not expired, and *the defense* is a by-law of the corporation to the effect that 'long-continued absence' of any member unheard of shall not . . . give any right to recover on any benefit certificate . . . until the full term of the member's expectancy of life, according to the National Fraternal Congress Table of Mortality, has expired, . . . and this law shall be in full force and effect, any statute of any state or country or rule of common law of any state or country to the contrary, notwithstanding.'
>
> "The only facts that need be mentioned are that the certificate seems to have been issued in *South Dakota*, although there was no allegation or proof concerning the law of that state, and that it was issued in 1901, while the by-law relied upon was not adopted until 1908. But *the by-law has been held valid and binding upon the members of the corpora-*

tion by the supreme court of Illinois, although they had become members before the change. Steen *v.* Modern Woodmen, 296 Ill. 104, 17 A. L. R. 406, 129 N. E. 546. The supreme court of *Nebraska* affirmed a judgment *for the plaintiff,* seemingly, from the cases cited, on the ground either that the rule of evidence must be determined by the *lex fori,* or, more probably, *that the by-law was unreasonable.* 111 Neb. 334, 197 N. W. 129. *The result is that if the validity of the by-law ought to be determined by the laws of Illinois, the plaintiff is allowed to recover upon a state of facts which the contract expressly stipulates shall not give her that right.* A writ of certiorari was issued by this court. 265 U. S. 576, 68 L. ed. 1187, 44 Sup. Ct. Rep. 455.

"The indivisible unity between the members of a corporation of this kind in respect of the fund from which their rights are to be enforced, and the consequence that their rights must be determined by a single law, is elaborated in Supreme Council, R. A. *v.* Green, 237 U. S. 531, 542, 59 L. ed. 1089, 1100, L. R. A. 1916A, 771, 35 Sup. Ct. Rep. 724. The act of becoming a member is something more than a contract,—it is entering into a complex and abiding relation,—and as marriage looks to domicil, membership looks to *and must be governed by the law of the state granting the incorporation. We need not consider what other states may refuse to do,* but we deem it established that *they cannot attach* to membership *rights against the company* that are refused *by the law of the domicil.* It does not matter that the member joined in another state. In the above-cited case Green became a member of a Massachusetts corporation in New York, and the state court held on ordinary principles of contract that his rights were governed by New York law. Green *v.* Supreme Council, R. A. 206 N. Y. 591, 597, 100 N. E. 411. But

> the decision was reversed, and it was held a failure to give full faith and credit to the Massachusetts charter as construed by the Massachusetts court that Green *was relieved by decree from paying assessments* increased by the corporation after his contract was made. We are of opinion that the decision in that case governs this, and that the judgment must be reversed." (69 L. ed., at p. 784 *et seq.*)

Obviously, this case also is essentially similar to the case of *Bradford Electric Light Co.* v. *Clapper* (where it is cited), *supra*, both in respect of the legal situation involved and the rule of law applied. Further comment is unnecessary.

Appellant refers to and cites (Brief, p. 48 *et seq.*) the case of *Whitman* v. *National Bank of Oxford*, 176 U. S. 559, 44 L. ed. 587, as a case where the "basic views" which the New Jersey statute at bar "embodies in statutory form * * * were rejected by this court under the full faith and credit clause of the United States Constitution" (Brief, pp. 50-51). In making this assertion, appellant errs. That was a suit brought in the federal court in New York against a New York resident by a judgment creditor of a Kansas corporation of which defendant was a stockholder. The object of the suit was to enforce a statutory stockholder's liability created by the Kansas constitution and statutes. To quote this court:

> "The defendant moved the circuit court of the United States to direct a verdict in his favor, upon the ground that it had no jurisdiction to enforce a statutory remedy of the state of Kansas. The court denied the motion, directed a verdict for the plaintiff, overruled a motion for a new trial, and entered a final judgment for the plaintiff. 76 Red. Rep. 697.

> That judgment was affirmed by the circuit court of appeals. 51 U. S. App. 536, 83 Fed. Rep. 288, 28 C. C. A. 404. The defendant thereupon applied for and obtained this writ of certiorari" (44 L. ed., at p. 589).

The question presented *was purely one of general law,* and did not involve any federal or constitutional question. The question was whether or not the plaintiff's cause of action created by the Kansas statute was "contractual in its nature" and *hence transitory.* This court held that

> "The liability which by the Constitution and statutes is thus declared to rest upon the stockholder, though statutory in its origin, is contractual in its nature" (44 L. ed., at p. 590).

and held further that

> "The right of the plaintiffs to sue upon this liability in any court having jurisdiction of the subject-matter and the parties is therefore clear" (44 L. ed., at p. 591).

For *this statement,* this court cited as authority the case of *Dennick* v. *Central R. Co.,* 103 U. S. 11, 26 L. ed. 439, wherein this court held, *on general legal principles* and without reference to any constitutional requirement, that a statutory cause of action which was transitory in character could be "pursued in any court which has jurisdiction of such matters and can obtain jurisdiction of the parties" (26 L. ed., at p. 441). The holding of the case under discussion, therefore, is simply that where a cause of action is created by the statutes of one State and is based upon a liability which is contractual in its nature, the cause of action, notwithstanding its "statutory origin," *is transitory*

and is *therefore* suable in the courts of other states. Such a holding says nothing on the constitutional question of whether or not such a cause of action is suable in the courts of another state *against the will of that State, as where it is in conflict with the latter's public policy.* The case, therefore, clearly does not, as appellant claims, "reject" the "view" that *a state may lawfully refuse to entertain such a suit in its courts.*

Appellant cites and quotes from the case of *Hancock National Bank* v. *Farnum,* 176 U. S. 640, 44 L. ed. 619 (Brief, p. 55) and asserts that that case is authority for the proposition that "all States must permit enforcement of additional stockholders' liabilities created by the laws of other States" (Brief, p. 55).

Not so. In order to understand the holding in that case, it is necessary to examine the opinion of the court below (20 R. I. 466; 40 Atl. 341):

> "The declaration sets out that the plaintiff is a creditor of the Commonwealth Loan & Trust Company, a corporation under the laws of Kansas, upon a judgment of the United States district court for the district of Kansas; that execution issued on said judgment, which has been returned unsatisfied; that the defendant holds 10 shares of the stock of said company, of the par value of $100 each; that he owes the plaintiff the sum of $1,000, under the laws of Kansas, which provide that execution for an amount equal to his stock may issue against a stockholder when property of the corporation cannot be found whereon to levy an execution against the corporation, or that the plaintiff may proceed by action to charge the stockholder; that by the constitution of Kansas, and by decisions of its supreme court, the liability of the stockholder is contractual, several, and transi-

tory; and that, having been so decided, under the provisions of the constitution of the United States an action on such liability may be had in this state. Article 12, Sec. 2, of the constitution of Kansas; article 4, c. 23, par. 1192, of the Kansas General Statutes; and the decisions of the supreme court of Kansas in Howell *v.* Manglesdorf, 33 Kan. 194, 5 Pac. 759, Abbey *v.* Dry-Goods Co., 44 Kan. 415, 24 Pac. 426, and Wells *v.* Robb, 43 Kan. 201, 23 Pac. 48,—are made a part of the declaration. The defendant demurs to the declaration. The plaintiff does not claim that a purely statutory liability in one state is a cause of action in another state, but that when it is of a contractual nature, or of a kind adapted to the lex fori, it is a cause of action. Accordingly it seeks to bring this case within the contractual class, and its proposition is this: The law is construed in Kansas to constitute a contract. Full faith and credit must be given to this construction, as a judicial proceeding, in other states. Hence the plaintiff is entitled to enforce in this state the liability of a stockholder in a Kansas corporation, as on a contract. The argument is pressed with ability and plausibility, but we are not able to see that it is applicable to this case. The declaration does not aver that the defendant has made a contract, nor that the law under which the corporation exists has made him a contracting party, but that an opinion of the supreme court of Kansas says that the relation between a stockholder and a corporation creditor is that of a contract. The provision of the federal constitution relates to statutes, judgments, and decrees. These are the things which are to have full faith and credit in the several states. Opinions of courts are not judgments; and although a court, in the interpretation of the statutes of its own state, will

be followed by other courts, there is no rule of comity or law that a court should be followed when its opinion is given simply upon its interpretation of general legal principles. Still less would an opinion be binding when it is not a decision, but merely a dictum. It does not appear to us that the opinion of the supreme court of Kansas, which is relied on in this case on the matter of contract, was, as to that question, anything more than a dictum. • • • Assuming, however, that the opinion of the supreme court of Kansas is that the relation of a stockholder to creditors is contractual, it is not a binding opinion upon us; it is not a judgment, to which full faith and credit must be given, under the federal constitution; and, giving to it the high respect which is due to the court from which it comes, it still falls short of establishing, as a matter of pleading in this declaration, the fact of a contract by the defendant, in Kansas, by virtue of the statute. • • • From this examination, we think it sufficiently appears that the declaration states no case of a contract under the decisions of the supreme court of Kansas, or the constitution of the state.

"We come then to the question whether we can construe the statute of Kansas to create a contractual relation.

• • • • • • •

"We are aware that the greater number of cases call the liability a contract, and undoubtedly the relation of a stockholder to a corporation has certain equitable features both of a contract and a guaranty; but we think it much more accurate to say that the liability is a statutory liabili[illegible], imply, incidental to the ownership of stock, than to say that it is a contract. In Rice *v.* Hosiery Co., 56 N. H. 114, the court says: 'The liability which the plaintiff seeks to en-

force is a mere creature of the statute, having none of the elements of a contract, whether express or implied. It is a naked statutory liability, entirely unknown to the common law, for the indebtedness of the corporation, however it may accrue,—whether for the breach of a contract, or the commission of a tort. The stockholder is not liable upon the contract in one case, nor for the tort in the other, but, under the statute, for the debt against the corporation which may grow out of either.' As this view is so clearly founded in reason, and as this court has already decided in Sayles *v.* Bates, *supra*, that the liability is not a contract, we do not feel called upon to change that decision, even though the majority of courts may hold the other way. It follows, therefore, that the declaration does not state a contract under the law of Kansas, as construed by the decisions of the supreme court of that state to which we have been referred, nor by our own construction of it" (40 Atl., 342 *et seq.*).

Clearly the State court merely purports to decide a *question of general law*, viz: that plaintiff's complaint did not state a legal cause of action because it set forth a claim based upon "a purely statutory liability" and not a liability "of a contractual nature" *and hence not enforceable in any other state than Kansas.* In other words, the State court decided that Plaintiff's claim was one which, so to speak, died at the boundaries of its creative State and had no vitality elsewhere. In rejecting that decision the United States Supreme Court begins its opinion with a reference to the case of *Whitman* v. *National Bank of Oxford*, 176 U. S. 559, 44 L. ed. 587, discussed hereinabove, wherein it was held that *on general principles of law* such a cause of action *was transitory*, and hence suable in the courts of

other States. Following the authority of the cited case, this court in the case under discussion holds likewise as to the claim at bar, thereby disagreeing with the holding of the Rhode Island court below. So holding, this court then proceeds to ask the question of whether or not the Rhode Island court, in holding to the contrary, denied any right secured by the "full faith and credit" clause of the United States Constitution, this court conceding that "if it finds that no such right was denied, the judgment will have to be affirmed, no matter what may be the opinion of this court as to the correctness of the ruling *as a question of general law*" (44 L. ed., at p. 621). The court then adverts to the *judgment* recovered by the plaintiff in the courts of *Kansas* against the corporation (of which defendant was a stockholder) and observes that under Sec. 1, Art. 4, of the United States Constitution, *that judgment* is entitled to be given *the same effect in Rhode Island that is given to it in Kansas.* Since in Kansas the judgment had the effect of entitling the plaintiff to bring suit against defendant on the claim in question, this court held that *the same effect* must be given to that *judgment* in the courts of *Rhode Island.* The court concludes as follows:

> "We are of the opinion, therefore, that the supreme court of Rhode Island has failed to give to the *judgment* in the circuit court of the United States for the district of *Kansas* that force and effect which *it* has within the limits of the State of *Kansas,* and that the faliure so to do is an error available in this court" (44 L. ed. 622).

Thus it is demonstrated that the case under discussion is not, as appellant claims, authority for the proposition "that all States must permit enforcement of additional

stockholders' liabilities created by the laws of other States" (Brief, p. 55), but is merely authority for the proposition that each State must permit the enforcement of such a liability *where a refusal to do so would fail to give effect to a judgment* of the other State as required by the Constitution and the related act of Congress. In the case at bar, of course, there is no such judgment in the foreign State (New York).

That the existence of the foreign judgment was the decisive feature of that case was explicitly declared by this court in the later case of *Finney* v. *Guy*, 189 U. S. 335, 47 L. ed. 839, where this court, referring to that case said:

> "In the second case it was again held that under the statute and the decisions of the Kansas courts, after a judgment had been obtained against the corporation and an execution returned unsatisfied, the individual creditor could maintain an action against a single stockholder in any court of competent jurisdiction. Having the right to maintain such action, it was held that when it was commenced in another state and in a proper court thereof, the judgment which was obtained in Kansas must have the same faith and credit given it in the courts of another state that was given it in Kansas" (47 L. ed., at p. 845).

The same view of the case in question was expressed by this court again in the case of *Converse* v. *Hamilton*, 224 U. S. 243, 56 L. ed. 749, where this court, referring to that case, said:

> "When the case came here, it was held that full faith and credit had not been given to the Kansas judgment upon which the creditor relied, and the judgment of the supreme court of Rhode Island was

> accordingly reversed, it being said in that connection: 'The question to be determined in this case was not what credit and effect are given in an action against a stockholder in the courts of Rhode Island to a judgment in those courts against the corporation of which he is a stockholder, but what credit and effect are given in the courts of Kansas in a like action to a similar judgment there rendered. Thus and thus only can the full faith and credit prescribed by the Constitution of the United States and the Act of Congress be secured' " (56 L. ed., at p. 755).

At this stage of our discussion, it is appropriate to set forth the fundamental difference between the effect which the "full faith and credit" clause of the United States Constitution and the related act of Congress secures to a foreign *judgment*, and the effect which they secure to a foreign *statute*. Sec. 1, Art. 4 of the United States Constitution provides as follows:

> "Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof."

In pursuance of said constitutional provision, Congress enacted a statute (Rev. Stat., Sec. 905) which provides as follows:

> "The acts of the legislature of any state or territory, or of any country subject to the jurisdiction of the United States, shall be authenticated by having the seals of such state, territory, or country affixed thereto. *The records and judicial proceedings*

> *of the courts* of any state or territory, or of any such country, shall be proved or admitted in any other court within the United States, by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice, or presiding magistrate, that the said attestation is in due form. *And the said records and judicial proceedings,* so authenticated, *shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the state from which they are taken.*"

It is apparent at once that Congress has differentiated between "the acts of the legislature of any state" and "the records and judicial proceedings of the courts of any state" by providing *with reference to the latter only* that "the said records and judicial proceedings, so authenticated, shall have such faith and credit given to them in every court within the United States *as they have by law or usage in the courts of the State from which they are taken.*" It is by virtue of this specific provision with reference to the "records and judicial proceedings of the courts of any state" that it is held (as in the last mentioned case, *supra*) that where a *judgment* of one state has the effect of creating a cause of action in favor of one person against another *in that state,* that judgment must be given *the same effect* in all the other states. *Per contra,* it is by reason of the fact that Congress has *not,* under its constitutional authority, attached such an effect to "the acts of the legislature of any state," that there is no constitutional sanction for a holding that where the *statutes* of one State create a cause of action in favor of one person against another, the same effect must be given to that

statute in the courts of all the other States (as appellant would now have this court hold).

The foregoing interpolation is particularly pertinent to the remainder of the cases which appellant cites in connection with his contention under discussion (Brief, pp. 60 to 70, inclusive). Thus in the case of *Bernheimer* v. *Converse*, 206 U. S. 516, 51 L. ed. 1163, cited by appellant (Brief, pp. 60 *et seq.*), the stockholder's liability sought to be enforced rested upon the basis of a foreign *judgment*, like that in the case of *Hancock National Bank* v. *Farnum*, 176 U. S. 640, 44 L. ed. 619, *supra*.

In this case, to quote this court:

> "*An order of assessment* [made by the Court] of 36 per cent of the par value of each share of the capital stock of the thresher company, to wit, $18 per share, was assessed against each and every share of the capital stock, and against each and every person, corporation, or party liable as such stockholder, and each such person, corporation, or party was directed to pay to the said receiver, at his office in the city of Stillwater, Minnesota, within thirty days after the date of the order, the said sum of $18 a share; and, further, upon failure to pay said sums, the receiver was authorized [by the same court order] to prosecute actions or proceedings against the persons liable in any court having jurisdiction in the State of Minnesota or elsewhere. On appeal to the supreme court of the state of Minnesota *this order* was affirmed" (51 L. ed., at p. 1165).

On appeal to this court, *the only constitutional questions raised and passed upon* (*and they were raised by the defendant and not the plaintiff*) were (1) whether or not the obligation of the defendant's contract (as stockholder)

was enlarged and hence *impaired* unconstitutionally by a statute of Minnesota, enacted *after* the defendant became a stockholder, which provided a new means of enforcing his stockholder's liability; and (2) whether that statute by providing for judicial proceedings to be had without personal service of process upon stockholders and yet making the proceedings binding on the latter, violated the constitutional provision with reference to "due process of law." To note this court:

> "The principal contentions in these cases are that the act of 1899, above referred to, works such a change in the contract theretofore existing by virtue of the acquisition of stock in a Minnesota corporation as to impair the obligation thereof, and, in ways to be hereafter noticed, undertakes to hold a stockholder by judgment rendered without due process of law" (51 L. ed. at p. 1172).

Whatever other questions were involved in the case were *questions of general law*, and in deciding such questions this court was merely exercising its ordinary appellate jurisdiction in a suit brought in the federal courts, since that suit was one originally instituted not in a State court but in the United States District Court in New York. Thus it was by way of pronouncing upon a *matter of general law* that this court said what appellant quotes in part (Brief, pp. 60 and 61) viz:

> "It may be regarded as settled that, upon acquiring stock, the stockholder incurred an obligation arising from the constitutional provision, contractual in its nature, and, as such, capable of being enforced in the courts not only of that state, but of another state and of the United States (Whitman *v.* National

> Bank, 176 U. S. 559, 44 L. ed. 587, 20 Sup. Ct. Rep. 477), although the obligation is not entirely contractual, and springs primarily from the law creating the obligation (Christopher *v.* Norwell, 201 U. S. 216, 50 L. ed. 732, 26 Sup. Ct. Rep. 502" (51 L. ed. at p. 1174).

In other words, this court was merely recognizing here the *transitory nature* of the cause of action, as witness its citation of the case of *Whitman* v. *National Bank*, 176 U. S. 559, 44 L. ed. 587, which dealt only with such a question. Other excerpts from the opinion which are quoted by the appellant (Brief, pp. 61 to 63) relate wholly to the two above-mentioned constitutional questions *raised by the defendant*.

To the similar case of *Converse* v. *Aetna National Bank*, 212 U. S. 565, 53 L. ed. 654, cited by appellant (Brief, p. 63), the same comment applies as that above made on the case of *Bernheimer* v. *Converse*, 206 U. S. 516, 51 L. ed. 1163.

Appellant (Brief, pp. 63, *et seq.*) cites and quotes extensively from the case of *Converse* v. *Hamilton*, 224 U. S. 243, 56 L. ed. 749. That case was an action at law brought in the State Court of Wisconsin by a receiver of an insolvent Minnesota corporation to enforce an asserted double liability of two of its stockholders, resident in Wisconsin. In the receivership suit, the Minnesota court had adjudicated the insolvency of the company, the amount of its liabilities and the necessity of resorting to the double liability of its stockholders, and *had made an order* levying upon its stockholders an assessment of a sum equal to the full par value of their respective shares, and directed the receiver to institute suits to recover said assessments, *within and without the state*. The defendants had been notified of the application for the orders levying assessments, by

publication or mail, as the court directed. The Wisconsin court sustained a demurrer to the complaint on the ground that the receiver *had no right* (that is *authority*) *to sue in a foreign jurisdiction,* the court relying upon the case of *Finney* v. *Guy,* 189 U. S. 335, 47 L. ed. 839, to sustain its position. In other words, the Wisconsin court's decision denounced not the maintainability of the cause of action but the legal capacity-to-sue of the plaintiff (the receiver). Plaintiff appealed to the United States Supreme Court on the ground that the decision of the Wisconsin court violated the full faith and credit clause of the Constitution of the United States. At the outset, the Supreme Court considers the pertinent Minnesota statutes and decisions, and finds, among other things, that under the Minnesota law the *order* made by the Minnesota court levying the assessment was conclusive upon the defendants as stockholders "as to all matters relating to the amount of and the propriety of and necessity for the said assessment," and *that the Minnesota law expressly authorized the plaintiff as receiver to institute suits against stockholders to collect such assessment in any state or country,* and that under the Minnesota law, as interpreted by its courts, and the court's order levying the assessment, the receiver was

> "*invested* with the creditors' rights of action against the stockholders, and *with full authority* to enforce the same in any court of competent jurisdiction in the state or elsewhere" (56 L. ed., at p. 754).

This court then proceeds as follows:

> "This statement of the nature of the liability in question, of the laws of Minnesota bearing upon its enforcement, *and of the effect which judicial pro-*

ceedings under those laws have in that state, discloses, as we think, that in the cases now before us the supreme court of Wisconsin failed to give full faith and credit to those laws and *to the proceedings thereunder,* upon which the *receiver's right to sue was grounded.* It is true that an ordinary chancery receiver is a mere arm of the court appointing him, is invested with no estate in the property committed to his charge, and is clothed with no power to exercise his official duties in other jurisdictions. Booth *v.* Clark, 17 How. 322, 15 L. ed. 164; Hale *v.* Allinson, 188 U. S. 56, 47 L. ed. 380, 23 Sup. Ct. Rep. 244; Great Western Min. & Mfg. Co. *v.* Harris, 198 U. S. 561, 49 L. ed. 1163, 25 Sup. Ct. Rep. 770. But here the receiver was not merely an ordinary chancery receiver, but much more. *By the proceedings in the sequestration suit,* had conformably to the laws of Minnesota, *he became a quasi assignee* and representative of the creditors, *was invested with their rights of action* against the stockholders, and *was charged with the enforcement of those rights* in the courts of that state *and elsewhere.* So, when he invoked the aid of the Wisconsin court, the case presented was, in substance, that of a trustee, clothed in adequate title for the occasion, seeking to enforce, for the benefit of his *cestuis que trustent* a right of action, transitory in character, against one who was liable contractually and severally, if at all. The receiver's right to maintain the actions in that court was denied in the belief that it turned upon a question of comity only, unaffected by the full faith and credit clause of the Constitution of the United States, and this view of it was regarded as sustained by the decision of this court in Finney *v.* Guy, 189 U. S. 335, 47 L. ed. 839, 23 Sup. Ct. Rep. 558. But that case is obviously distinguishable from those now before us." • • •

> "We perceive nothing in the decision in that case which makes for the conclusion that *when the representative character, title, and duties of a receiver have been established by proceedings in a Minnesota court* conformably to the altogether different provisions of the later statute embodied in chapter 272, his right to enforce in the courts of another State *the assessment judicially levied in Minnesota* depends upon comity, unaffected by the full faith and credit clause" (56 L. ed. at pp. 754-755).

From this language it is clear that the Supreme Court was dealing purely and specifically with the question of whether or not the plaintiff (receiver) was *"clothed with adequate title"* to enforce the stockholders' liability. That this was the precise question which the Supreme Court had in mind is conclusively attested by the fact that it refers to the decision of the Wisconsin court as having been rested *by that court* upon the decision of the United States Supreme Court in *Finney* v. *Guy*, 189 U. S. 335, 47 L. ed. 839, where the Supreme Court had affirmed the State court in holding that a receiver of an insolvent Minnesota corporation, under the then existing Minnesota law, *was not clothed with any right to sue outside of Minnesota* to enforce a liability of stockholders. This places beyond doubt that the Supreme Court was addressing itself solely to the question of whether or not the plaintiff as receiver was *invested with an authority or capacity* to enforce the stockholders' liability in the courts of other States, that is to say, whether the receiver was vested with title to the cause of action against the stockholders so that he would have *a standing* in the courts of other States to sue thereon. (At common law, of course, only the *owner* of a legal right or chose in action can sue thereon. *47 Corpus Juris, 22*). This question is to

be sharply distinguished from the altogether different question of whether or not, granted that a foreign receiver is by the laws of the foreign State invested with title to a cause of action against stockholders and with authority and capacity to prosecute that cause of action outside of his appointive State, other States *are bound to afford him a tribunal* in which he can exercise his admitted authority to sue upon the cause of action admittedly vested in him, a question which manifestly was not involved in the case under discussion. Indeed, in its decision of the case under discussion, the court was merely following its previous holding in the case of *Bernheimer* v. *Converse*, 206 U. S. 516, 51 L. ed. 1163, *supra*, where the court dealt with the objection *that the receiver could not bring the action.* What the court decided in that case is plainly indicated by the following language quoted from *that decision* by the Supreme Court in the case under discussion:

> "It *is objected that the receiver cannot bring this action*, and Booth *v.* Clark, 17 How. 322, 15 L. ed. 164; Hale *v.* Allison, 188 U. S. 56, 47 L. ed. 380, 23 Sup. Ct. Rep. 244; and Great Western Min. & Mfg. Co. *v.* Harris, 198 U. S. 561, 49 L. ed. 1163, 25 Sup. Ct. Rep. 770, are cited and relied upon. But in each and all of these cases it was held that a chancery receiver, having no other authority than that which would arise from his appointment as such, could not maintain an action in another jurisdiction. In this case the statute *confers the right* upon the receiver, as a quasi assignee and representative of the creditors, and as such vested with the authority to maintain an action: *In such case we think the receiver may sue in a foreign jurisdiction* (56 L. ed., at p. 755).

This, of course, has nothing whatsoever to do with the question of whether or not one State is bound to permit a *cause of action* created by the laws of another State to be sued upon in its own courts, a question which manifestly goes *to the enforceability of the foreign cause of action* and *not* to the *legal authority or capacity* of any particular plaintiff *to institute suit thereon.* In the case at bar the question is whether or not a State may enact a law which prohibits its own courts from entertaining suit *upon a particular cause of action created by the laws of another State,* regardless of *who* brings the suit and regardless of the legal capacity or authority of the suitor to sue upon the prohibited cause of action. Section 94b of the New Jersey Corporation Act is plainly directed not against any particular suitor but against a particular cause of action.

But wholly independent of the foregoing considerations, the case under discussion (*Converse* v. *Hamilton*) is fundamentally *distinguishable* from the case at bar for three additional reasons: First, that case did not involve any conflict between the laws of Minnesota (on which the cause of action was based) and the laws of Wisconsin (where it was sought to be enforced); second, in that case *it was conceded that the Wisconsin Court "was possessed of jurisdiction" to entertain the suit;* and third, in that case the Supreme Court regarded and treated the plaintiff's cause of action as based not only upon the laws of Minnesota *but upon the "judicial proceedings"* in that State, and held that a denial of the plaintiff's right to sue in that case was a denial of full faith and credit to the *judicial proceedings* of Minnesota.

With respect to the first of these distinguishing features, it is to be noted that the Supreme Court itself gave it spe-

cial and explicit emphasis when it referred to the "well recognized exceptions" to the full faith and credit clause of the Constitution. Thus this court concedes that "the full faith and credit clause of the Constitution is not without well-recognized exceptions" (56 L. ed., at p. 755) and *in this immediate connection* the court plainly recognizes as one of such exceptions a case where plaintiff's suit *comes into conflict with the public policy of the State in which the suit is brought.* As to this the court says:

> "The subject to which chapter 272 [the Minnesota statute] is addressed is peculiarly within the regulatory power of the state of Minnesota; so much so that no other state properly can be said to have any *public policy* thereon. And what the law of *Wisconsin* may be respecting the relative rights and obligations of creditors and stockholders of corporations of its creation, and the mode and means of enforcing them, *is apart from the question under consideration*" (at p. 756).

In other words, the court is here observing that the case does not involve a clash between the foreign law and the public policy of the State of the forum inasmuch as the subject of the liability of stockholders of a *Minnesota corporation* and the method of enforcing same, *is a matter for Minnesota to legislate upon* and not *Wisconsin;* and hence the question of whether the *plaintiff (receiver)* was or was not *vested* with the cause of action against stockholders and the *legal capacity to prosecute same outside of Minnesota* was determinable only by the laws of Minnesota and could not possibly be *affected* by any questions as to the *public policy of Wisconsin.* Thus the court is plainly indicating that in that case there was no conflict between the Minnesota

law and the public policy or laws of Wisconsin. When regard is had to the fact that this observation occurs in the very course of the court's discussion of the *exceptions to the "full faith and credit" clause,* it can only be understood as the plainest recognition of the rule laid down in *Texas & Pacific Railroad Co.* v. *Cox,* 145 U. S. 593, 36 L. ed. 829, and the other cases cited *supra* that a person cannot compel the courts of one State to entertain a suit by him upon a cause of action created by the laws of another State where such law is in conflict with or contrary to the laws of the forum. In the case at bar, appellant's cause of action, based upon the New York Banking Law, is in direct and square conflict with the law of the State of New Jersey, whose plain and express terms forbid the maintenance of appellant's suit in the New Jersey courts of law.

With reference to the second of the abovementioned distinguishing features of the case under discussion, viz: that there was no question but that the Wisconsin court *"was possessed of jurisdiction" to entertain the suit,* it is to be noted that *this, too,* was emphatically mentioned by the Supreme Court in the course of its discussion of the *exceptions* to the "full faith and credit" clause. Thereby this court plainly implied and indicated that if any *want of jurisdiction* in the Wisconsin court had existed in that case, *that fact* would have taken the case out of the operation of the "full faith and credit" clause. In this connection, the court says:

> *"It is not questioned* that the Wisconsin court in which the receiver sought to enforce the causes of action with which he had become invested under the laws and proceedings relied upon *was possessed*

> *of jurisdiction which was fully adequate to the occasion.* His right to resort to that court was not denied by *reason of any jurisdictional impediment,* but because the Supreme Court of the State *was of the opinion* that, as to such causes of action, the courts of that State 'could, *if they chose,* close their doors and refuse to entertain the same' " (p. 756).

In other words, says the Supreme Court, the case is not one where the Wisconsin court had no jurisdiction to entertain the suit but merely one where the court thought it had *discretion to refuse to entertain the suit.* In the case at bar, the New Jersey Corporation Act (Section 94b) flatly denies jurisdiction to the New Jersey courts of law to entertain this suit.

The third of the abovementioned distinguishing features of the case in question is the fact that the Supreme Court regarded the plaintiff's cause of action as based not only upon the laws of Minnesota but *"upon the judicial proceedings"* of that State, and held that a denial of plaintiff's right to sue was a denial of full faith and credit to the *judicial proceedings* of Minnesota. This feature, alone, renders that case utterly inapplicable to the case at bar. For the full faith which is required by the Constitution to be accorded to a *foreign judgment* is fundamentally and totally different from that which applies to a *foreign statute* as we have already shown. That the Supreme Court, in the case under discussion, regarded that case as one involving a suit based not merely on a foreign statute but on foreign *"judicial proceedings"* is unequivocally asserted by the court itself in the following concluding paragraph of its decision:

> "In these circumstances, we think the conclusion is unavoidable that the laws of Minnesota *and the*

> *judicial proceedings in that state,* upon which the receiver's title, authority, and right to relief were grounded, *and by which the stockholders were bound,* were not accorded that faith and credit to which they were entitled under the Constitution and laws of the United States" (at p. 756).

If there were any doubt that the *ratio decidendi* of that case was that the state court had failed to give the constitutional full faith and credit to the "*judicial proceedings*" of another State, such doubt would be finally and completely resolved by the language of the Supreme Court in the later case of *Marin* v. *Augedahl,* 247 U. S. 142, 62 L. ed. 1038, wherein that case (Converse *v.* Hamilton), is cited and followed. The case of *Marin* v. *Augedahl, supra,* was, in most respects, similar to the *Converse* case, although the question of law raised was not precisely the same. In that case, the suit was brought in a North Dakota court by the receiver of an insolvent Minnesota corporation to enforce against a stockholder in North Dakota *an order of a Minnesota court* levying an assessment on the stockholders generally. The only defense set up was that the Minnesota court had no jurisdiction to make the said order because, defendant claimed, the corporation in question was not embraced within that class of corporations upon whose stockholders such liability was imposed by the Minnesota law. The United States Supreme Court held that the defendant was foreclosed and concluded from raising this question by the said *order* of the Minnesota court itself. In discussing that court order, the United States Supreme Court says:

> "The order with which we are here concerned was made by a Minnesota court in a sequestration

suit against a Minnesota corporation. Besides being a court of general jurisdiction, both at law and in equity, the court making the order had full jurisdiction of that suit. The suit was begun by a judgment creditor after an execution on his judgment was returned unsatisfied. The defendant corporation had its principal place of business in the county where the suit was begun, and was brought into the suit by due service of process. This much is not questioned. Nor is it questioned that a receiver was appointed, or that, by a petition in the suit, he sought an assessment on the stockholders, *or that public notice of the hearing on the petition was given as the court directed,* or that there was a *hearing* as contemplated" (at p. 1041). * * *

The order making the assessment is 'necessarily based upon a determination that the corporation is of the class whose stock is assessable, and not of the excepted class.' Whether the *decision* was right or wrong is not open to discussion here. If wrong it was subject to correction on proper application to the court which made it, or on appeal, but it was not void or open to collateral attack (at p. 1042). * * * By the law of its organization the *Minnesota court* was empowered to take cognizance of, hear and determine, the suit to sequestrate and the receiver's petition for an assessment. Thus it had jurisdiction of the subject matter. Cooper *v.* Reynolds, 10 Wall. 308, 316, 19 L. ed. 931, 932. The corporation was before it in virtue of process duly served, and the stockholders, as has been said, were *represented by the corporation.* Thus there was jurisdiction of the person.

Under these circumstances, *the order* is entitled, under the Constitution and laws of the United States, to the same faith and credit in the courts of North Dakota *as by law or usage are given to such order*

in the courts of Minnesota. Hancock Nat. Bank *v.* Farnum, 176 U. S. 640, 44 Law ed. 619, 20 Sup. Ct. Rep. 506; *Converse* v. *Hamilton,* 224 U. S. 243, 56 L. ed. 749, 32 Sup. Ct. Rep. 415, Ann. Cass. 1913D 1292'' (62 L. ed., at p. 1043).

This is a conclusive demonstration that in this case (*Marin* v. *Augedahl*), the United States Supreme Court considered and dealt with the *order of the Minnesota court,* levying an assessment upon stockholders, *as the thing that was entitled to ''full faith and credit''* under the Constitution, and by citing the case of *Converse* vs. *Hamilton* in that connection the court indicated its view that the similar *court order* involved in the *Converse* case, *was likewise regarded by the Supreme Court in that case.*

The case of *Marin* v. *Augedahl, supra,* is also relied upon by appellant (Brief, p. 67 *et seq.*) as authority for the proposition that Section 94b of the New Jersey Corporation Act is unconstitutional as denying full faith and credit to the New York Banking Law. In view of the fact hereinabove demonstrated that that case involved the application of the full faith and credit clause, not to the statute of another State but to the *judicial proceedings* of another State, it is scarcely necessary to add anything further to dispose of appellant's contention. Yet additional grounds of distinction are obvious. The case did not involve any opposition between the laws of the two states, as does the case at bar; nor was it a case, like the present one, in which the court of the forum lacks jurisdiction to entertain the suit by virtue of a statute which deprives it of such jurisdiction.

Appellant asserts (Brief, p. 69) that the foregoing cases in which there were foreign judgments adjudicating the

fact and amount of the stockholders' liability, are not to be distinguished from the case at bar by the fact that in this case there is no such foreign judgment. Appellant gives as his reason for this assertion that "if the extra-territorial force of the orders of theMinnesota court [in those cases] was predicated exclusively upon the application of the full faith and credit clause of the United States Constitution to *judgments*, the orders independent of the statutes upon which they were founded would have been invalid in jurisdictions other than Minnesota because of the absence of personal service in Minnesota upon the stockholders affected (*Pennoyer* v. *Neff*, 95 U. S. 714)" (Brief, p. 69). By this we suppose appellant means that if those judgments were considered in isolation and divorced from any cognizance of the related statutes under and in pursuance of which they were rendered, they might appear to have been defective because the non-resident stockholders had not been personally served in the suit; and that therefore the binding effect of such judgments upon the stockholders does not become apparent until account is taken of the related laws. True. But it does not follow from this that the meaning and effect of those decisions is to be arrived at *by ignoring the judgments themselves* and taking account only of *the related statutes only;* yet this is what appellant's argument seeks to do. Appellant overlooks the paramount fact that the very reason why those judgments were held entitled to be given the particular effect in other States which was there compelled, notwithstanding the want of personal service upon the non-resident stockholders, was because *such was the effect which the judgments had in the State in whose courts they were recovered, by virtue of the laws of that State;* and under the

provisions of the Constitution and the act of Congress, the courts of other States were bound to give such a *judgment the same effect as that which was given to it by the laws of the State wherein it was recovered.* The pertinent act of Congress provides as follows:

> "The acts of the legislature of any state or territory, or of any country subject to the jurisdiction of the United States, shall be authenticated by having the seals of such state, territory, or country affixed thereto. The records and judicial proceedings of the courts of any state or territory, or of any such country, shall be proved or admitted in any other court within the United States, by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice, or presiding magistrate, that the said attestation is in due form. And the said records and judicial proceedings, so authenticated, shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the State from which they are taken" (Rev. Stat., Sec. 905).

Appellant, still referring to the abovementioned (Minnesota) cases, says "the order or decree of the Minnesota court was largely *administrative* in character" (Brief, p. 69). Without stopping to consider the accuracy or inaccuracy of that statement it is sufficient to say that the reason why *"the order or decree of the Minnesota court"* was required by this court to be given due effect in the courts of other states was because, and only because, of its *"judicial"* character, and the express provisions of the "full faith and credit" clause and the related act of Congress, which provides:

> "* * * The records and judicial proceedings of the courts of any state or territory, or of any such country, shall be proved or admitted in any other court within the United States, * * *. And *the said records and judicial proceedings,* so authenticated, shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the state from which they are taken" (Rev. Stat., Sec. 905).

The cases in this court, such as *Kennedy* v. *Gibson,* 75 U. S. 476, and others, which appellant cites (Brief, p. 69), as recognizing the "administrative character" of such a decree or order, are all cases which *related to national banks* and were entirely governed by the *acts of Congress.* Obviously in such a case there could be no question as to the enforceability of a statute of one state by the courts of another state. The controlling law in such a case is the *federal law* relating to *national banks,* and, such law being the supreme law of the land, all states, of course, are bound to enforce it. The "full faith and credit" clause *obviously* is inapplicable and would not have to be invoked in such a case. For the same reason appellant's reference to the "quasi-judicial" character of an assessment by the *United States Comptroller of the Currency* against stockholders of a *national bank* is inapposite; and for the same reason appellant's effort to analogize an assessment by the Superintendent of Banks of the *State of New York* against stockholders of a *New York state bank* to an assessment by the United States Comptroller against stockholders in a *national bank* is utterly fallacious and is destitute of either logical or legal warrant.

POINT II.

The constitutionality of that provision of the New Jersey Statute in question which prohibits the bringing of a law action is not affected by any question as to the validity of that provision of the statute which permits the bringing of an equity action.

Appellant (Brief, p. 71) advances the proposition that

> "The requirement of Section 94b that the assessment may only be enforced through an accounting in an action initiated by a bill in equity denies to the determination by the New York Superintendent that conclusive effect which attaches to such determination under the laws of New York" (Brief, p. 71).

Under that proposition appellant presents arguments (Brief, pp. 71 to 74), most of which seem unrelated to his proposition. In addition to this, the argument is multifarious; and consequently we are compelled to take it up piecemeal.

Starting with the main proposition itself, we challenge the premise of fact upon which it rests, viz: that the determination of the New York Superintendent has a *conclusive* effect under the laws of New York. On the contrary, Section 80 of the New York Banking Law, after providing that

> "the superintendent shall have a cause of action, in his own name as superintendent of banks, against such stockholder either severally or jointly with other stockholders of such corporation, for the amount of such unpaid assessment or assessments" (Brief, p. 96),

goes on to provide that

> "In any such action, the written statement of the superintendent, under his hand and seal of office, reciting his determination to enforce the individual liability, or any part thereof, of such stockholders, and setting forth the value of the assets of such corporation and the liabilities thereof, as determined by him after examination and investigation, shall be *presumptive evidence* of such facts as therein stated" (Brief, p. 96).

In other words, the statute plainly recognizes and contemplates that in an action against the stockholder, the Superintendent will have to *prove* the value of the assets of the corporation, and the amount of its liabilities, in order to make out a case against the stockholder; and the above quoted provision merely facilitates such proof by him, by according to his written statement in that regard, the character of *presumptive* evidence. This provision of the New York statute investing the Superintendent's written statement with the character of "presumptive evidence" is one which, on elementary principles, is not binding upon and would not be recognized by the courts of other States. It is a mere rule of procedure. Obviously, the Legislature of one State cannot, by saying that a certain written statement shall be *prima facie* evidence of the truth of that which it asserts, impose upon the courts *of other States* an obligation to treat that written statement as even *competent evidence* in its own courts, let alone accord it the probative effect of *prima facie* proof. Plainly, such a *statement* is not merely hearsay, but is hearsay with reference to a matter as to which the writer, himself, (the Superintendent of Banks) even has no personal knowledge.

But even if the New York Superintendent's "determination" did have a *conclusive* effect under the laws of

New York, the courts of New Jersey would be under no constitutional obligation to give such "determination" the same conclusive effect in New Jersey; for that determination is not a judgment or "judicial proceeding" (United States Constitution, Art. 4, Sec. 1; Rev. Stat. Sec. 905). Nor is the Superintendent's "determination" a public act within the meaning of the full faith and credit clause of the Constitution, as appellant casually asserts (Brief, p. 74). The words "public act" as used in the full faith and credit clause of the United States Constitution mean *statute* and nothing else. This is established beyond question by the fact that Congress in carrying out the direction contained in Article 4, Section 1 of the United States Constitution (the "full faith and credit" clause) enacted that

> "The *acts of the legislature* of any state or territory, or of any country subject to the jurisdiction of the United States, shall be authenticated by having the seals of such state, territory, or country affixed thereto. * * *"

By making no provision as to *any other "acts,"* Congress evinced its own understanding that *no other* "acts" were intended by the constitutional clause in question. Moreover, this court itself has spoken to the same effect in *Bradford Electric Light Co.* v. *Clapper,* 286 U. S. 145, 76 L. ed. 1026, at page 1032.

Appellant complains (Brief, pp. 72 and 74) that Section 94b of the New Jersey statute in question "requires the Superintendent to institute an action in New Jersey in the nature of an equitable accounting * * * in order to recover the assessment made by him from New Jersey stockholders," and hence requires "judicial re-ascertainment" of the amount of the bank's liabilities and of the value of its

assets to establish the deficiency for which stockholders are to be held liable. From the standpoint of *constitutional requirements,* this complaint is wholly immaterial, since, as we have said above, the United States Constitution does not obligate the State of New Jersey to attach a conclusive effect to the New York Superintendent's "determination." Aside from its immateriality on this appeal, however, appellant's complaint is devoid of merit even on general legal principles. For as we have shown above, the New York Superintendent's determination, even under the New York law, is merely made "presumptive evidence" as to the amount of the liabilities and the value of the assets of the bank. In assigning a *prima facie* probative character to the Superintendent's determination (that is, "his written statement" thereof) the New York Banking Law merely enacted a *rule of procedure.* Being a mere *rule of procedure,* that feature of the New York law would not be binding on the courts of other states. Consequently even if the appellant were permitted by the New Jersey law to prosecute his action in a New Jersey *court of law* (as distinguished from a *court of equity*), it would still be necessary for the Superintendent to prove, by competent primary evidence, the value of all the assets of the bank and the amount of all its liabilities. In other words, appellant would be put to the same proof *in a court of law* in New Jersey as he would *in a court of equity* in New Jersey. Hence, appellant's complaint against the New Jersey statute on the score of its requiring him to bring *an equity action* in the nature of an accounting instead of an action at law is without substance. (We repeat, of course, that the foregoing discussion is academic on this appeal, since it does not relate to any *federal* question).

Appellant asserts (Brief, p. 72) that the cases of *Whitman* v. *National Bank of Oxford,* 176 U. S. 559, 44 L. ed. 587, and *Hancock* v. *Farnum,* 176 U. S. 640, 44 L. ed. 619, establish that the New Jersey statute in question violates not only the "full faith and credit" clause of the United States Constitution, but also the "due process" clause. As regards the "full faith and credit" clause, we have hereinbefore fully discussed those cases. As regards the "due process" clause, appellant says not a word as to why or how those cases warrant his indictment of the New Jersey statute on that score. An examination of those cases readily reveals them to be barren of such warrant. Appellant's further references (Brief, pp. 72 to 74) to the same cases and to other cases as authority for his contention that the New Jersey statute violates the full faith and credit clause of the United States Constitution calls for no further discussion by us, inasmuch as all of said cases have already been fully dealt with hereinabove. To answer appellant's various assertions in that portion of his brief now under discussion (Brief, pp. 72 and 73) would be mere repetition of previous portions of our own brief. We might note, however, one particular assertion of appellant, to wit, that the New Jersey statute in question would prohibit the institution of suits even in cases like that of *Bernheimer* v. *Converse,* 206 U. S. 516, 51 L. ed. 1163, *Marin* v. *Augedahl,* 247 U. S. 142, 62 L. ed. 1038, and other cases cited by appellant, where it was held that other states were bound to give full faith and credit to the "judicial proceedings" of the Minnesota courts involved in those cases. This assertion of appellant carries on its face its own refutation. As we have hereinabove shown, the *ratio decidendi* in those cases was that the courts of other states were required by the

United States Constitution to give due effect to the *judgment* of the Minnesota court, and that the giving due effect to the Minnesota judgment necessarily entailed and required enforcing the stockholders' liability therein and thereby adjudicated.

Appellant (Brief, p. 74) advances the proposition that:

> "The conditions imposed by Section 94b upon the enforcement of such assessment constitute a denial of the right of the Superintendent to resort to the Courts of the State of New Jersey to recover upon the assessment liability of stockholders of New York banks residing in New Jersey and thus violates the full faith and credit and due process clauses of the United States Constitution (Constitution, Art. IV, Sec. 1, XIVth Amendment).

Excepting the fact that this proposition makes reference to the "due process" clause of the United States Constitution, the proposition is virtually the exact equivalent of the proposition previously advanced (Brief, p. 71) as proposition "D" of appellant's Point I, which proposition we have already dealt with hereinabove. Appellant's argument under this particular proposition may be summarized thus:

The New Jersey statute in question which, on the one hand, prohibits an *action at law* in the New Jersey courts in such a case as this, on the other hand permits an action to be brought in its *equity courts*. But (appellant argues) the bringing of such an action in the New Jersey equity court is impracticable because it requires the joinder as defendants of more than 400,000 depositors and creditors and 20,000 stockholders (all of whom are non-residents of New Jersey), the doing of which (appellant claims) is

impracticable, legally impossible, and prohibitively expensive. It would be sufficient to dispose of this argument merely to say that it is utterly irrelevant to any *constitutional* question presented in this case. The question before this court is whether or not the United States Constitution compels a state to entertain a suit in its courts upon a cause of action based upon the statutes of another state. That question is wholly unaffected by the fact that the State, although refusing to entertain such a suit in its law courts, at the same time provides the suitor with another remedy which is or may be either impracticable or even legally defective. The question is whether that which the New Jersey statute *prohibits* is constitutional; not whether that which the New Jersey statute *permits* is legally valid or available. Obviously, therefore, appellant's attack upon the statute which is aimed *at that which it permits,* viz: its provision for a suit in equity is utterly beside the mark; and appellant's assertion that *that provision* of the statute is "unconstitutional" does not even need an answer. Of course, what counsel really means to say is that a non-resident who might be joined in such an equity suit, if one were brought, might have a right to claim that he would not be bound by any judgment entered therein by virtue of an absence of "due process of law." Obviously this purely hypothetical problem involving the rights of a third person (as a prospective defendant) is as remote as possible from any constitutional question in the case at bar.

If it were necessary to join issue with appellant's criticism of the *permissive* feature of the New Jersey statute, it would not be difficult to offer arguments in refutation thereof. In the first place, the criticism which appellant derives from the fact of the large number of the depositors

and stockholders of the New York bank, does not arise from any intrinsic fault in the New Jersey statute but from a mere circumstance connected with the New York bank itself. For example, if this suit were brought by the receiver of a comparatively small New York business corporation, to enforce a statutory liability against New Jersey stockholders of that corporation, and the total number of the corporation's stockholders and creditors was, let us say, no more than ten, the equity action which the New Jersey statute permits would not appear to be so impracticable or unreasonable as appellant says it is. Is this provision of the statute, then, to be condemned, not because of its own intrinsic nature but because of the peculiar situation which a particular case presents? In the next place, can it not be claimed with reason and justice that the real trouble in this case arises from the fact that the New York Legislature has seen fit to transfer the "determination" of the necessity for and extent of the enforcement of stockholders' liability from the courts of New York to the desk, so to speak, of the New York Superintendent of Banks? Indeed, the shortcomings of this method were implicitly recognized by the New York Legislature itself when in Section 80 of the New York Banking Law it provided that the "determination" of the New York Superintendent should be "*presumptive* evidence" and not *conclusive* evidence as to those matters in any action *brought in the courts of New York* to enforce such a stockholders' liability, thereby conceding the propriety of an ultimate *judicial* determination of those matters. Indeed, the absolute right of a stockholder to have a *court* pass upon these matters *in a judicial proceeding* was declared by the highest court of New York in the case of *Assets Realization Co.*

v. *Howard*, 211 N. Y. 430. In that case, that court, in dealing with a suit to enforce the stockholders' liability, says:

> "But whatever the technical nature of the liability may be, there can be no question that in its practical aspects and consequences it is of a secondary and exceptional character which is developed only by the unusual contingency that the corporation has become insolvent and unable to pay its debts. * * * Therefore, it comes about that unless in the action to charge him the stockholder may dispute and try the issue of indebtedness, he may very easily and probably be subjected to this onerous and unusual liability and compelled to pay an alleged debt which never existed and which has never been contested."

Although the suit in that case was instituted by a judgment creditor of the bank instead of the superintendent of banks, as here, the principle involved was identical, namely, the right of the stockholder to take issue on those facts whose existence are conditions precedent to the accrual and ascertainment of his liability.

POINT III.

Section 94b of the New Jersey Corporation Act and the judgment below do not deprive the creditors of the Bank of the United States of their property without due process of law.

Appellant (Brief, p. 80) makes the following statement:

> "Moreover, since the assessment obligation arises out of the free and voluntary contract entered into by stockholders residing in New Jersey, and is in

> the nature of an ordinary commercial obligation, it may not be destroyed through a denial of the right to pursue ordinary legal remedies in the courts of New Jersey without at the same time depriving the creditors of The Bank of United States of their property without due process of law."

Appellant offers no argument whatsoever in support of this bare assertion but merely names the following cases, apparently as his authority for making it viz.: "*N. Y. Insurance Co.* v. *Dodge*, 246 U. S. 357; *N. Y. Life Insurance Co.* v. *Head*, 234 U. S. 159; *Insurance Co.* v. *Dunken*, 266 U. S. 389; *Insurance Co.* v. *Dick*, 281 U. S. 397" (Brief, p. 80). None of these cases is apposite.

In each of said cases the *defendant* appealed to this Court from a judgment of a state court which, by applying the law of the forum to a contract made in another state and governed by the latter's laws, deprived *defendant* of a good *defense* which the foreign law gave him. Thus the holding in the first named case: *N. Y. Insurance Co.* v. *Dodge, supra*, was as follows:

> "Under the laws of New York, where the parties made the loan agreement now before us, it was valid; also it was one which the Missouri legislature could not destroy or prevent a citizen within its borders from making beyond them by direct inhibition; and applying the principles accepted and enforced in New York L. Ins. Co. *v.* Head, we think the necessary conclusion is that such a contract could not be indirectly brought into subjection to statutes of the state and rendered ineffective through a license authorizing the insurance company there to do business. As construed and applied by the Springfield court of appeals, Sec. 7897 transcends the power of the state. To hold otherwise would permit destruc-

> tion of the right—often of great value—freely to borrow money upon a policy from the issuing company at its home office, and would, moreover, sanction the impairment of that liberty of contract guaranteed to all by the 14th Amendment" (62 L. ed. at p. 783).

The holding in the second named case: *N. Y. Life Insurance Co.* v. *Head, supra,* is sufficiently indicated in the foregoing quoted excerpt wherein it is expressly referred to.

The holding in the third named case: *Insurance Co.* v. *Dunken, supra,* was as follows:

> "From these premises it necessarily results that the second policy follows the status of the first, for which it was exchanged, and is not subject to the Texas statute relating to penalties and attorneys' fees, but is controlled by Tennessee law. The judgment below, therefore, in so far as it gives effect to the Texas statute by imposing a penalty of 12 per cent and allowing attorneys' fees, is erroneous, in that the Texas statute cannot constitutionally be applied to a Tennessee contract" (69 L. ed. at p. 350).

In the fourth named case: *Insurance Co.* v. *Dick, supra,* the suit was brought in the court of Texas by a citizen of that state upon a contract entered into in Mexico and by an express provision of the contract it was made subject to the Mexican law. Notwithstanding this fact, the Texas court permitted plaintiff to recover a judgment in accordance with the provisions of the Texas laws. On appeal to this court, which reversed the judgment below, this court said:

> "Texas was, therefore, without power to affect the terms of contracts so made. Its attempt to im-

> pose a greater obligation than that agreed upon and to seize property in payment of the imposed obligation violates the guaranty against deprivation of property without due process of law" (74 L. ed. at p. 933).

It is plainly apparent that the foregoing cases furnish no support to appellant's aforesaid contention.

Appellant (Brief, p. 81) cites and quotes from several cases on the subject of "due process." The first of these cases is *Nebbia* v. *New York*, 291 U. S. 502. That was an appeal to this Court by defendant from a judgment of the County Court of Monroe County, State of New York, convicting him of violating an order of the state milk-control board fixing retail prices to be charged for milk by stores. This Court affirmed the judgment of the court below. Obviously that case has no bearing on any question presented by the appeal at bar. The next case is that of *Sioux City Bridge Co.* v. *Dakota County*, 260 U. S. 441, 67 L. ed. 341. The facts and the holding in that case, to quote from the opinion of this court, were as follows:

> "This case is here by writ of certiorari to the supreme court of Nebraska. The question is whether the taxing authorities of the state of Nebraska and of Dakota county, in assessing taxes against the petitioner, the Sioux City Bridge Company, upon that part of its bridge across the Missouri river at South Sioux City, which is in the jurisdiction of Nebraska, deprived the Bridge Company of due process of law, and denied it the equal protection of the laws, in violation of the 14th Amendment" (67 L. ed. at p. 341). • • •
>
> "The dilemma presented by a case where one or a few of a class of taxpayers are assessed at 100 per

> cent of the value of their property, in accord with a constitutional or statutory requirement, and the rest of the class are intentionally assessed at a much lower percentage, in violation of the law, has been often dealt with by courts, and there has been a conflict of view as to what should be done. There is no doubt, however, of the view taken of such cases by the Federal courts in the enforcement of the uniformity clauses of state statutes and constitutions, and of the equal protection clause of the 14th Amendment. * * * This court holds that the right of the taxpayer whose property alone is taxed at 100 per cent of its true value is to have his assessment reduced to the percentage of that value at which others are taxed, even though this is a departure from the requirement of statute" (67 L. ed. at p. 343).

The next of these cases is *Chicago R. R. Co.* v. *City of Chicago,* 166 U. S. 226, 41 L. ed. 979. In that case, the plaintiff railroad company had been awarded a sum of One Dollar by a court of Illinois "for the taking, under the right of eminent domain, of a part of its right of way for the putting a public street across said right of way in the city of Chicago" (41 L. ed. at p. 980). The plaintiff railroad company appealed to this court on the ground that the said judgment deprived it of its property without due process of law. This court affirmed the judgment of the court below and concluded its opinion as follows:

> "We have examined all the questions of law arising on the record of which this court may take cognizance, and which, in our opinion, are of sufficient importance to require notice at our hands, and finding no error, the judgment is affirmed" (41 L. ed. at p. 992).

Obviously none of these cases has the slightest applicability to the case at bar.

It is self-evident that the refusal of a state to entertain a suit upon a cause of action based upon the statutes of another state cannot possibly be said to deprive the plaintiff of any property without due process of law, in violation of the Constitution of the United States. A refusal of a state to open the doors of its courts to a suitor does not take anything away from the plaintiff. Just the reverse; it merely refrains from giving something to him. The only case in which such a refusal could even arguably be said to take something from him would be a case where a contract upon which he relied had been entered into by him prior to the date on which the proscribing statute was enacted. Such is not the situation in the case at bar, for the New Jersey statute here in question was enacted in 1897, which was years before the Bank involved herein was organized (Record, pp. 15 and 20). Excepting the case where the plaintiff's contract antedated the opposing statute, it would seem impossible that such a statute could ever be said to have the effect of depriving *a plaintiff* of any property without due process of law. It is always a *defendant* who is thus aggrieved. This distinction between the legal situation of a *plaintiff* and the legal situation of a *defendant* in the case of a refusal of the courts of one state to enforce rights arising under the laws of another state, was expressly noted by this court in the case of *Bradford Electric Light Co.* v. *Clapper*, 286 U. S. 145, 76 L. ed. 1026. In that case this Court said:

> "A state may, on occasion, *decline to enforce a foreign cause of action.* In so doing, it merely denies a remedy, leaving unimpaired the plaintiff's

> substantive right, so that he is free to enforce it elsewhere. But to refuse to give effect to a substantive *defense* under the applicable law of another State, as under the circumstances here presented, *subjects the defendant* to irremediable *liability. This* may not be done" (76 L. ed. at p. 1036).

And be it noted that in support of this distinction, this Court cites, *inter alia,* one of the cases which appellant has hereinabove cited on the subject of "due process of law," viz.: *Insurance Co.* v. *Dunken,* 266 U. S. 389, 69 L. ed. 342, 45 S. Ct. 129.

POINT IV.

The New Jersey Statute in question and the judgment below do not operate in this case to violate the provision of the United States Constitution which entitles the citizens of each State to all the privileges of citizens in the several States (Art. IV, Sec. 2, Par. 1).

Appellant asserts (Brief, p. 80):

> "In depriving, through the imposition of impossible conditions, the New York Superintendent of Banks, and through him the creditors of The Bank of United States, of the right to sue in New Jersey, Section 94b as applied by the judgment below violates that provision of the United States Constitution which entitles the citizens of each state to all the privileges, including the right to sue, of the citizens in the several states."

This contention is clearly untenable. The New Jersey statute in question applies to all actions of the kind therein described *by whomsoever brought,* regardless of whether

or not the plaintiff is or is not a citizen of New Jersey. Indeed, the statute goes further in its impartiality and applies to actions against stockholders of any corporation, whether "domestic" or "foreign." Thus the statute provides:

> "*No action* or proceeding shall be maintained in any court of law of this state against any stockholder, officer or director of any domestic or foreign corporation * * *."

The language used by this court in the case of *Chambers* v. *Baltimore & O. R. Co.*, 207 U. S. 142, 52 L. ed. 143, is squarely applicable. In that case the court said:

> "She [the plaintiff] has not been denied access to the Ohio courts because she is not a citizen of that state, but because *the cause of action* which she presents is not cognizable in those courts. She would have been denied hearing of the same cause for the same reason if she had been a citizen of Ohio. In excluding her cause of action from the courts the law of Ohio has not been influenced by her citizenship, which is regarded as immaterial" (52 L. ed., at p. 147).

POINT V.

Appellant's Point II is immaterial on this appeal and does not present a Federal question.

Appellant (Brief, p. 82) advances the proposition that

> "Since Section 94b is unconstitutional, this action was properly instituted in the New Jersey Court of Law."

As to this, it is only necessary for us to say that the sole question before this court is whether or not Section 94b is unconstitutional, as appellant claims. If it is, the further question which appellant's proposition raises is academic, aside from the fact that it does not present a federal question.

POINT VI.

The judgment below is not invalidated on any constitutional ground because it is a final judgment and does not provide for a transfer of the cause to the Court of Chancery of New Jersey.

Appellant, (Brief, p. 83) advances the proposition that

> "In any event, since the judgment below is final and the action was not transferred to the Court of Chancery of New Jersey, it is invalid."

Obviously this proposition does not raise any constitutional or federal question and hence cannot properly be considered by this court. Nor does appellant himself claim that his proposition raises a constitutional or federal question; for nowhere in his argument under the proposition does he mention or even suggest any such question. What is more, however, appellant's alleged grievance in this particular regard is wholly without justification, for although appellant (Brief, p. 83) asserts that the court below

> "entered an order *over objections of counsel for plaintiff*, directing not that the action be transferred to the Court of Chancery or be dismissed with leave to institute suit in equity pursuant to Section 94b of the New Jersey Corporation Act, *but that judgment*

final be entered in favor of the defendants (R., p. 22),"

the transcript of the record in this case conclusively establishes that that situation is attributable entirely to appellant's own neglect or fault. In the opinion filed by Justice Parker in the New Jersey Supreme Court (Record, p. 15) the court concludes its opinion with the following language:

> "My conclusion is that the present complaint cannot be supported and must be struck out as stating causes of action which by statute are not maintainable at law in this State. Whether a judgment for the defendant should be directed thereon is a matter on which counsel are probably entitled to be heard.
>
> As I view the matter now, it would seem that there should be a judgment for the moving defendants subject of course to appeal, and without prejudice to the filing of a bill in equity on the lines laid down in Section 94b of the Corporation Act. The matter might be transferred to the Court of Chancery, but the complaint would have to be reframed, I think in any event.
>
> I will hear counsel on the first convenient motion day as to settlement of these details."

That opinion was filed on January 30th, 1934 (Record, p. 15). Ten days later the same Supreme Court Justice "on due notice to plaintiff" made the order striking out appellant's complaint (Record, p. 21), and that order contains, *inter alia*, the following language:

> "Ordered, that plaintiff's complaint be and the same hereby is struck out as to the above named defendants, and *it appearing that no application is made by plaintiff to amend said complaint*, it is further

> Ordered, that judgment final be entered in favor of each of said defendants and against said plaintiff, with costs to be taxed under the direction of this Court" (Record, p. 22).

These record facts are irreconcilable with appellant's assertion above quoted, unless, of course, that assertion is intended by appellant to mean merely that the striking out of the complaint was done "over objections of counsel for plaintiff" (Brief, p. 83), but not the omission which appellant now complains of. Moreover, the appellant, despite his own neglect, has not been irremediably prejudiced by the feature of the judgment which he complains of, for the remittitur entered in the New Jersey Court of Errors and Appeals is held up by the present appeal to this court and consequently the record and proceedings herein have not yet been remitted to the court below. Hence, if there should be a judgment of affirmance by this court, the New Jersey Court of Errors and Appeals will still have jurisdiction of the cause. *King* v. *Ruckman*, 22 N. J. Eq. 552. Appellant, therefore, would be in a position to apply to that court and obtain an amendment or modification of the remittitur so as to transfer the cause to the New Jersey Court of Chancery.

CONCLUSION.

We therefore respectfully submit that the judgment of the court below should be affirmed.

Respectfully submitted,

NATHAN BILDER,
WALTER J. BILDER,
Of counsel with Respondents Mary Rosner, Essie R. Stone, Camilla Lowy, *et al.*